

OPAL3 SERVICES

Software as a Service (SaaS) Terms and Conditions

WELCOME

Praxxis Group Ltd will provide you with use of the Services, including a browser interface, data transmission facility, access and storage. Your registration for, or use of, the Services shall be deemed to be your agreement to abide by this Agreement including any materials available on the opal3 website incorporated by reference herein.

1 DEFINITIONS AND INTERPRETATION

The following are the standard terms and conditions under which Praxxis Group Ltd ("Praxxis Group") supplies services. These Terms and Conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement " means these Terms and Conditions.

"Business Day" means a day other than a Saturday, Sunday, or a public holiday in Auckland, New Zealand.

"Business Hours" means 8.30am to 5pm New Zealand time each Business Day.

"Charges" means the charges payable by the Client for the Services.

"Client" means the party named as the purchaser of the Services.

"Commencement Date" means the first day of the calendar month following the date the Client creates its opal3 site online.

"Data" means any data inputted into the Software, via the Services, that relates to the Client.

"Force Majeure" means any cause beyond the reasonable control of a party including riots, acts of war, epidemics, governmental action superimposed after the date of this Agreement, legislative change, strikes and other industrial action, communication line or internet failures, power failures, earthquakes or other disasters.

"Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how, confidential information and any other intellectual or industrial property rights, whether or not registered.

"Licensing Period" means one calendar month from the Commencement Date and each month thereafter until termination pursuant to these Terms and Conditions.

"Payment Terms" means the payment terms set out in these Terms and Conditions.

"Permitted User" means those Personnel who are authorised to access and use the Services in accordance with clause 3.3(a).

"Personnel" means employees of, or consultants to, the Client.

"Services" means the provision of access to and use of the Software via the Website and related services.

"Software" means the software known as opal3 and includes any update.

"Update" means an update to the Software comprising modifications to the Software in the nature of improvements made to correct program faults or other defects or to effect minor enhancements to the functionality of the Software.

"Website" means the Internet site at the domain opal3.com, or such other address notified to the Client by Praxxis Group, via which the Client can access and use the Software.

1.2 **Interpretation:** For the purposes of this Agreement, unless the context requires otherwise:

- (a) words importing the singular or plural number include the plural and singular number respectively;
- (b) a reference to:
 - (i) a "**person**" includes any individual, corporation, unincorporated association, government department or municipal authority;
 - (ii) a party to this Agreement includes that party's successors and permitted assigns;
 - (iii) "**including**" and similar words do not imply any limitation.
- (c) headings and subheadings are inserted for the sake of convenience only and do not affect the interpretation of this Agreement; and
- (d) any covenant not to do anything also constitutes an obligation not to suffer or permit or cause that thing to be done.

2 PRAXXIS GROUP OBLIGATIONS

2.1 Praxxis Group to provide Services: Praxxis Group must use its best endeavours to:

- (a) provide, on a non-exclusive basis, the Services to the Client subject to, and in accordance with, the terms of this Agreement;
- (b) provide the Services in a proper, professional and workmanlike manner; and
- (c) exercise due care, skill and diligence at all times,

provided that Praxxis Group shall not be in breach of this Agreement to the extent that it is unable to comply with this clause 2.1 (or of any other provision of this Agreement) due to any negligence, default or failure to comply with this Agreement by the Client.

2.2 Computer systems: Praxxis Group is responsible for procuring, at its expense, all information technology solutions and systems (including hardware and software) reasonably necessary for it to provide the Services in accordance with this Agreement.

2.3 Praxxis Group access to Data:

- (a) The Client acknowledges that Praxxis Group may require access to the Data to fulfil its obligations under this Agreement. To the extent this is necessary,

Praxxis Group may authorise a member or members of its staff to access the Data for this purpose.

- (b) The Client must ensure that it has arranged all necessary consents and approvals for Praxxis Group to access the Data as described in clause 2.3(a).
- (c) Praxxis Group must ensure that any authorised member of staff complies with clause 6 of this Agreement or as otherwise agreed by the parties.

2.4 **Data Security and Back-Up:** Praxxis Group will use its best endeavours to ensure that the Data is held in a secure environment and is regularly backed up using at least industry standard techniques and procedures.

2.5 **Other services:** At the request of the Client, Praxxis Group may agree to provide to the Client consultancy and other services that relate to the Services but are not otherwise covered by this Agreement. Such additional consultancy and other services will be performed and charged as separately agreed.

3 CLIENT OBLIGATIONS

3.1 **General:** The Client must only use the Services for:

- (a) its own internal business purposes; and
- (b) for lawful purposes,

and must not resell the Services.

3.2 **Access conditions:** The provision of the Services by Praxxis Group is subject to the Client complying with the following conditions:

- (a) Access to the Services by the Client is limited to Permitted Users. The Client must not permit any other person to access or use the Services.
- (b) In accessing the Software, via the Services, the Client must:
 - (i) not impersonate another person or misrepresent authorisation to act on behalf of others or Praxxis Group;
 - (ii) correctly identify the sender of all electronic transmissions;
 - (iii) not attempt to undermine the security or integrity of Praxxis Group's computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;

- (iv) not attempt to gain unauthorised access to the computer system on which the Software is hosted;
- (v) not transmit, or input into the Software, any Data or other material in violation of any law, including Data or other material protected by copyright, legally judged to be threatening or obscene, protected by trade secrets, or in relation to which it has not obtained the necessary consent to use it; and
- (vi) comply with any terms of use on the Website as amended from time to time by Praxxis Group by posting the new terms on the Website.

3.3 Permitted Users:

- (a) The Client may authorise any member of its Personnel to be a Permitted User in which case the Client will provide to Praxxis Group the Permitted User's name and other information that Praxxis Group reasonably requires in relation to the Permitted User.
- (b) The Client must inform each Permitted User of its obligations with respect to clauses 3.1 and 3.2 and any other reasonable condition notified by Praxxis Group to the Client.
- (c) A breach of any term of this Agreement by a Permitted User is deemed to be a breach of this Agreement by the Client.

3.4 Client to supply Data:

- (a) The Client will provide the Data for inputting into the Software and will maintain this Data as required.

3.5 Suspending access: Without limiting clause 10, Praxxis Group may restrict or suspend the Client's, or a Permitted User's, access to the Software where the Client or a Permitted User:

- (a) undermines, or attempts to undermine, the security or integrity of the Software, Services or any of the computing systems or networks on which the Software is hosted;
- (b) uses, or attempts to use, the Services:
 - (i) for improper purposes; or

- (ii) in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Services; or
- (c) has breached this Agreement (in Praxxis Group's reasonable opinion).

3.6 **Notification:** Praxxis Group must notify the Client where it restricts or suspends the Client's, or a Permitted User's, access under clause 3.5.

4. CHARGES

4.1 **Charges:** The Client must pay all fees or charges in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable.

4.2 **Invoicing and billing cycle:** Praxxis Group will electronically provide the Client with a valid tax invoice for Charges under this Agreement on the last Business Day of each relevant calendar month.

4.3 **Payment:** Other than in relation to disputed invoices (as defined in clause 4.4), the Client must, unless agreed differently, pay an invoice automatically via recurring monthly credit card billing, 10 Business Days after invoicing. The name that will appear on clients' credit card statement is Praxxis Group Ltd.

4.4 **Disputed invoices:** If the Client raises a bona-fide dispute in relation to an invoice submitted under this clause 4 ("**disputed invoice**"):

- (a) the Client must pay that part of the disputed invoice in respect of which no dispute exists, by the due date for that invoice; and
- (b) in respect of that part of the disputed invoice which is disputed:
 - (i) if the dispute is resolved at least 5 Business Days before the due date, then the amount agreed by the parties to be payable, or determined under clause 11.1 to be payable, must be paid by the due date; and
 - (ii) if the dispute is resolved at least 5 Business Days before the end of the calendar month following the disputed licensing period, then the amount agreed by the parties to be payable, or determined under clause 11.1 to be payable, must be paid by the next due date; and

- (iii) in all other cases, the amount agreed by the parties to be payable, or determined under clause 11.1 to be payable, must be paid within 10 Business Days of such agreement or determination, and
- (iv) the Client must pay to Praxxis Group interest at the rate of 2.5% above the then overdraft lending rate of the ASB Bank of New Zealand on the monies unpaid from the due date for payment until the actual date of payment.

4.5 **Non payment:** If the Client defaults on the payment of any monies payable under this Agreement by the due date for payment in two consecutive months, this will result in suspension of the Services and may result in loss of data.

4.6 **Permitted variations:** Praxxis Group may review and revise any ongoing Charges payable by the Client on an annual basis, provided that any increases do not exceed the increase in the most recent publication of the New Zealand Consumer Price Index. Notification is via email. In the event, the new price shall come into effect in the month subsequent to notification.

5 SUBCONTRACTING

5.1 **Appointment of subcontractors:** Praxxis Group may appoint (or change) a subcontractor to provide any or all of the Services, including hosting the Software.

5.2 **Praxxis Group remains liable:** Praxxis Group remains principally liable for any of the Services supplied on its behalf by a subcontractor.

6 CONFIDENTIALITY

6.1 **General obligations of confidentiality:**

- (a) "Confidential Information" means all information, whether written or oral, including but not limited to party's products, business, technical, manufacturing and research efforts, that is identified by a party as "confidential" at the time of disclosure, or due to its nature the receiving party knows or should know to be confidential. Client's Data is considered to be the Confidential Information of Client.

- (b) Both parties agree that they will not use the other party's Confidential Information except as necessary for the performance of this Agreement, and will not disclose to any third party any Confidential Information obtained from the other under or in connection with this Agreement, except to its agents, contractors or subcontractors with a specific need to know.
- (c) Each party undertakes to use its best endeavours to ensure its personnel, agents, contractors and subcontractors are aware of and comply with the provisions of clause 6.1(a).
- (d) In fulfilling the obligations in clause 6.1 (a) and (b), each party will as a minimum standard use the same degree of care to avoid disclosure as it uses to protect its own confidential information.

6.2 **Exceptions:** The obligations under clause 6.1 do not apply to the extent that information

- (a) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party;
- (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality;
- (c) is rightfully received by the receiving party from a third party without restriction on use or disclosure;
- (d) is disclosed with the prior written permission of the disclosing party;
- (e) is required to be disclosed pursuant to law, regulation or court order provided that the party required to make such a disclosure gives prompt notice to the other party to give that party a reasonable opportunity to contest such order or requirement.

6.3 **Data:** Praxxis Group acknowledges and agrees that Data stored on the Software is held by it solely as an agent of the Client for the purposes of the New Zealand Privacy Act 1993.

6.4 Upon termination or expiration of this Agreement, a receiving party agrees to destroy or promptly return to a disclosing party all tangible items relating to discloser's Confidential Information, including all written materials, photographs, models, or samples and the like and all copies thereof.

7 INTELLECTUAL PROPERTY

7.1 Ownership:

- (a) Subject to clause 7.1(b), title to, and all Intellectual Property Rights in, the Software and any documentation on, or in relation to, the Software or Services remain the property of Praxxis Group.
- (b) Title to, and all Intellectual Property Rights in, the Data remains the property of the Client.

7.2 **Intellectual Property Rights warranty:** Praxxis Group warrants to the best of its knowledge and belief that the Client's use of the Software or Services does not infringe the Intellectual Property Rights of any third person.

7.3 Intellectual property indemnity:

- (a) Praxxis Group shall defend and indemnify the Client against, and pay the costs (including legal costs on a solicitor own client basis), damages or liability arising out of, any action, claim, or settlement alleging infringement of any third party's Intellectual Property Rights ("**IP Claim**") arising out of or in connection with the Client's use of the Software or Services, subject to the Client:
 - (i) promptly notifying Praxxis Group in writing of any allegation of infringement;
 - (ii) making no admission without Praxxis Group's consent; and
 - (iii) at Praxxis Group's request, allowing Praxxis Group to conduct and/or settle all negotiations and litigation and giving Praxxis Group all reasonable assistance. The costs incurred or recovered in such negotiations and litigation will be for the account of Praxxis Group.
- (b) If at any time an IP Claim is made, or in Praxxis Group's reasonable opinion is likely to be made, or in the defence or settlement of such claim, Praxxis Group may (at its option):
 - (i) modify or replace the items which are subject to the IP Claim so they become non-infringing, provided that this does not have a material adverse effect on the Software or Services; or
 - (ii) procure for the Client the right to continue using the items which are subject to the IP Claim.

- (c) Praxxis Group is not obliged to indemnify the Client under this clause to the extent that an IP Claim arises from or in connection with:
 - (i) use of the Software by the Client in a manner or for a purpose not reasonably contemplated by the Agreement or not authorised by Praxxis Group; or
 - (ii) use of the Software or Services in combination by any means and in any form with other items not specifically approved by Praxxis Group.

8 WARRANTIES

- 8.1 **Authority:** Each party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute valid and binding obligations on it in accordance with its terms.

- 8.2 **Performance of Software:** Praxxis Group warrants that the Software will function substantially as advertised subject to the Client acknowledging that the Software is complicated and technical in nature and may have minor or inherent defects.

- 8.3 **No implied warranties:** Praxxis Group's warranties are limited to those set out in this Agreement and any implied conditions or warranties (including warranties under the New Zealand Sale of Goods Act 1908) are excluded. Without limit and despite anything to the contrary in this Agreement, Praxxis Group does not warrant that the Services (including the Software):
 - (a) will meet any unreasonable client requirement;
 - (b) will be uninterrupted or error free; or
 - (c) are fault-tolerant or designed, manufactured or intended for use in environments requiring fail-safe performance, in which failure of the Services could lead directly to death, personal injury or physical or environmental damage.

8.4 **Limitation of remedies:** Where legislation or rule of law implies into this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of a liability under such condition or warranty, the condition or warranty is deemed to be included in this Agreement. However, the liability of Praxxis Group for any breach of such condition or warranty is limited, at the option of Praxxis Group, to one or both of the following:

- (a) supplying the Services again; or
- (b) paying the costs of having the Services supplied again.

8.5 **Consumer guarantees:** The Client agrees and represents that it is acquiring the Services and entering this Agreement for the purposes of a business and that the New Zealand Consumer Guarantees Act 1993 does not apply to the supply of the Services or this Agreement.

9. LIMITATION OF LIABILITY AND INDEMNITY

9.1 **Unrecoverable losses:** Neither party is liable to the other party for any indirect, incidental or consequential loss or damage or loss of revenue, profit, savings, or Data arising out of or in connection with this Agreement. This clause does not apply to the Client's liability to pay the Charges when due and payable under this Agreement.

9.2 **Liability of Praxxis Group:** The maximum aggregate liability of Praxxis Group under or in connection with this Agreement in any 12 month period must not exceed the Charges paid in the preceding 12 month.

9.3 **Extent of limitations:** The limitations and exclusions of liability in this clause 9 are separate limitations and exclusions and apply regardless of whether such liability arises in contract, tort (including negligence) or otherwise.

9.4 **Mitigation:** Each party must take all reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with this Agreement.

9.5 **Indemnity:** The Client indemnifies and keeps indemnified Praxxis Group and its employees, contractors and agents from and against any and all, direct or indirect, loss, costs, expenses, demands, damage or liability (whether criminal or civil), including reasonable legal fees, resulting from or in connection with:

- (a) a breach of this Agreement by the Client or its Personnel; and/or
- (b) any action or claim in respect of the Data or any part of it.

10 TERM AND TERMINATION

10.1 **Term:** This Agreement commences on the Commencement Date and continues indefinitely, subject to clauses 10.2, 10.3 and 10.4.

10.2. **Normal termination:** The client may, at an point, terminate the agreement by

- (a) giving notice 10 Business Days in advance of the end of a calendar month; and
- (b) withdrawing the relevant credit card payment authority.

10.3 **Automatic termination:** This Agreement automatically terminates on 10 Business Days' notice by Praxxis Group if it loses, for any reason, the right to provide the Services to the Client.

10.4 **Termination for cause:** Either party may terminate this Agreement immediately by giving notice to the other party, if the other party:

- (a) commits a material breach of this Agreement and fails to remedy that breach within 10 Business Days of receipt of notice of the breach from the first party; or

- (b) becomes insolvent, is placed in receivership or liquidation, is the subject of any winding up or liquidation resolution or order, or is subject to any other form of insolvency action or administration.

10.5 **Deletion of Data:**

- (a) Upon the expiry or termination of this Agreement, Praxxis Group must delete from the Software all Data.
- (b) If requested by the Client prior to the Data being deleted, Praxxis Group must provide the Client with all Data in a utilisable format which is to be agreed between the parties.

10.6 **Expiry or termination:** Clauses 6, 7, 8, 9 and 10 survive the expiry or termination of this Agreement.

10.7 **Effect of termination:** Termination of the Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination.

10.8 **Refund or Payment upon Termination:** Upon any termination, one final invoice will be charged to the Client on the last calendar day of the month of the termination, subject to clauses 10.2, 10.3 or 10.4.

11 **GENERAL**

11.1 **Disputes:**

- (a) The parties must work together in good faith to resolve any dispute or difference arising between them under or connection with this Agreement. If the dispute or difference is not resolved within 20 Business Days, either party can exercise any right including legal proceedings.
- (b) Pending resolution of a dispute, each party, to the extent it is able, must continue to perform its obligations under this Agreement.

11.2 **Force Majeure:**

- (a) Neither party is liable to the other for any failure to perform its obligations under this Agreement by reason of any cause or circumstance that is caused by Force Majeure.

- (b) The party affected must:
 - (i) immediately notify the other party in writing and provide full information concerning the Force Majeure event including an estimate of the time likely to be required to overcome that event;
 - (ii) use best endeavours to overcome the event and minimise any loss to the other parties; and
 - (iii) continue to perform its obligations as far as practicable

11.3 Notices

- (a) Each notice, agreement and other communication (each a "**communication**") to be given, delivered or made under this Agreement must be in writing but may be sent by email to the address of the other party (or to any other address or number from time to time designated for that purpose by notice by a party to the other). The initial details of the parties are

Praxxis Group Address: - Dr. Bernie Frey
Chief Executive
Praxxis Group Ltd
20 Ian Sage Avenue
Torbay
Auckland 0630
New Zealand

Client Address: - as per online sign up details

A communication under this Agreement is effective:

- (i) in the case of personal delivery, when delivered;
- (ii) if posted or delivered to a document exchange, 3 Business Days, in the place of receipt, after posting or delivery to the document exchange;
and

provided that any communication received or deemed received after 5pm on a day which is not a Business Day is deemed not to have been received until the next Business Day.

(b) Where one party sends a notice to the other party by e-mail, to the address of the other party provided for in this clause or as advised in the future, and the sending email system confirms the notice was delivered successfully, the notice is deemed to be received by the other party on the day of that confirmation. Initial email addresses are as follows:

- (i) Praxxis Group: admin@praxxisgroup.com
- (ii) Client: as per online sign up details

11.4 Restrictions on assignment:

- (a) The Client may not assign or attempt to assign any of its rights, interests or obligations under this Agreement except with the prior written consent of the Praxxis Group.
- (b) Any transfer of shares, or any other arrangement affecting the Client or its holding company, which results in a change of effective control of the Client is deemed to be an assignment subject to clause 11.4(a).

11.5 No partnership/agency: Subject to clause 6.3, nothing contained in this Agreement is deemed to constitute the parties as partners nor constitute a party the agent or legal representative of the other party. No party has authority to act or to assume any obligation or liability on behalf of the other party except as expressly provided in this Agreement.

11.6 Entire agreement: This Agreement supersedes and extinguishes all prior agreements, representations (whether oral or written), and understandings and constitutes the entire agreement between the Client and Praxxis Group relating to the Services and the other matters dealt with in this Agreement.

11.7 Amendments: No amendment to this Agreement will be effective unless it is in writing and signed or accepted electronically by all parties.

11.8 Counterparts: This Agreement may be signed in counterparts which together shall constitute one agreement binding on the parties, notwithstanding that both parties are not signatories to the original or same counterpart.

11.9 **Governing law and jurisdiction:** This Agreement is governed by the laws of New Zealand and the courts of New Zealand shall have non-exclusive jurisdiction in any proceedings relating to it.

11.10 **Waiver:** No forbearance, delay or indulgence on the part of either party in enforcing any provision of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of any of its rights operate as a waiver of any subsequent breach.

11.11 **Severability:** If any part or provision of this Agreement is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.