

**CONCEPT INFORMATION TECHNOLOGY LIMITED****Terms and Conditions – Supply of Services**

<b>CONTENTS</b>	
1	Interpretation
2	Basis of contract
3	Order of precedence
4	Supply of Services
5	Customer's obligations
6	Charges and payment
7	Intellectual Property Rights
8	Data protection
9	Export
10	Change control
11	Limitation of liability
12	Termination
13	Consequences of termination
14	Force majeure
15	Dispute resolution
16	Assignment and other dealings
17	Confidentiality
18	Non-solicitation
19	Entire agreement
20	Variation
21	Waiver
22	Severance
23	Notices
24	Relationship of Parties
25	Third-party rights
26	Governing law
27	Jurisdiction
SCHEDULE 1	DEFINITIONS AND INTERPRETATION
SCHEDULE 2	DATA PROTECTION

## 1 Interpretation

- 1.1 The definitions as set out in Schedule 1 shall apply throughout these Conditions and any related SoW (comprising “the Agreement” as defined in Schedule 1) unless expressly stated otherwise.
- 1.2 In the Agreement, a reference to:
- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.2 a Party includes its permitted assigns;
  - 1.2.3 a statute or statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision; and
  - 1.2.4 a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  - 1.2.5 clauses and schedules are to the clauses and schedules of these Conditions and references to paragraphs are to paragraphs of the relevant schedule.
  - 1.2.6 a numbered paragraph will, unless otherwise stated, be deemed to be a reference to the paragraph of that number in the schedule in which the reference is made.
  - 1.2.7 writing or written includes email but not fax.
- 1.3 Clause, schedule and paragraph headings shall not affect the interpretation of the Agreement.
- 1.4 The schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Any words following the terms *including* or *include* or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 Basis of contract

- 2.1 The SoW shall only be deemed to come into effect further to signature by both parties at which point and on which date the Agreement will come into existence (“**Commencement Date**”).
- 2.2 Any samples, drawings, descriptive matter or advertising issued by Concept are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They will not form part of the Agreement or have any contractual force.

## 3 Order of precedence

- 3.1 Unless express provision is made to the contrary, in the event of any conflict or inconsistency between a SoW and these Conditions, the SoW shall take precedence.
- 3.2 In the event there is a conflict between different SoWs, the SoW that has been fully signed the latest shall take precedence.

## 4 Supply of Services

- 4.1 Concept will supply the Services to the Customer in accordance with the relevant SoW in all material respects.
- 4.2 Concept will use all reasonable endeavours to meet any performance dates specified in a SoW, but any such dates shall be estimates only and time will not be of the essence for performance of the Services.
- 4.3 Concept reserves the right to amend a SoW if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Concept will notify the Customer in any such event.
- 4.4 Concept warrants to the Customer that the Services will be provided using reasonable care and skill.

## 5 Customer's obligations

- 5.1 The Customer will:

- 5.1.1 ensure that the terms of a SoW are complete and accurate;
- 5.1.2 co-operate with Concept in all matters relating to the Services;
- 5.1.3 make available to Concept, at least one Customer contact, during Normal Working Hours with sufficient knowledge of the Services described in a SoW to provide information and assistance to enable Concept to complete its obligations and authority to approve any Change requests;
- 5.1.4 provide Concept, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, power, cabling, communication and other facilities as reasonably required by Concept;
- 5.1.5 provide Concept on a timely basis, with such information and materials as Concept may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 5.1.6 (if applicable) prepare the Customer's premises for the supply of the Services to include (but not being limited to) maintaining at all times a safe and proper operating environment;
- 5.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 5.1.8 regularly back up all files and data;
- 5.1.9 comply with all applicable laws, including health and safety laws;
- 5.1.10 keep all materials, equipment, documents and other property of Concept ("Concept Materials") at the Customer's premises in safe custody at its own risk, maintain Concept Materials in good condition until returned to Concept, and not dispose of or use Concept Materials other than in accordance with Concept's written instructions or authorisation; and
- 5.1.11 comply with any additional obligations as set out in a SoW.
- 5.2 The Customer will procure for itself at its own expense any third-party software licences stated within a SoW as being required by the Customer and necessary to enable Concept to provide the Services and the Customer will at all times comply with such third-party licence terms.
- 5.3 If Concept's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
  - 5.3.1 without limiting or affecting any other right or remedy available to it, Concept will have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Concept's performance of any of its obligations;
  - 5.3.2 Concept will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Concept's failure or delay to perform any of its obligations as set out in this clause 5.3; and
  - 5.3.3 the Customer will reimburse Concept on written demand for all and any costs or losses sustained or incurred by Concept arising directly or indirectly from the Customer Default, following which Concept may, but is not obliged to send to the Customer a detailed Change Control Note setting out details of any such additional Charges.
- 5.4 Responsibility for any outcome which results from a decision taken on the basis of advice given by Concept under the Agreement, whether verbally or in writing, will remain with the Customer.
- 6 **Charges and payment**
- 6.1 The Charges for the Services will be set out in a SoW. Such Charges shall be valid for the 12-month period beginning on the start date of delivery of the Services to which the SoW relates. Concept may increase the Charges on each anniversary of the start date of delivery in line with the average percentage increase (if any) in the average weekly earnings (AWE) for the Information and Communication industry by reference to the most recent figures (EARN03, AWE by Industry, category "J", not seasonally adjusted, excluding bonuses but including arrears) published by the UK Office for National Statistics (or any successor index or body) over the preceding 12-month period by reference to the most recently published monthly growth

figures. Concept will provide the Customer with an updated rate card detailing the Charges following such increase. The updated rate card will not apply to any uncompleted Statements of Work.

- 6.2 Where specified in the relevant SoW, Concept will be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Concept engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Concept for the performance of the Services, and for the cost of any materials.
- 6.3 Concept will invoice the Customer at the intervals specified in a SoW and if no such intervals are specified, on completion of the Services. In the absence of any such specified interval, Concept will invoice the Customer monthly in arrears.
- 6.4 Unless otherwise stated in a SoW, the Customer will pay each invoice submitted by Concept:
  - 6.4.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Concept and confirmed in writing to the Customer; and
  - 6.4.2 in full and in cleared funds to a bank account nominated in writing by Concept, and time for payment will be of the essence of the Agreement.
- 6.5 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Agreement by Concept to the Customer, the Customer will, on receipt of a valid VAT invoice from Concept, pay to Concept such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.6 If the Customer fails to make a payment due to Concept under the Agreement by the due date, then, without limiting any other remedies that Concept may have, the Customer will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.7 All amounts due under the Agreement will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 6.8 Any advance deposits paid against charges due to Concept for Services or Deliverables provided under a SoW will be applied in relation to charges raised for those Services and Deliverables only.
- 6.9 If the Customer disputes any invoice raised by Concept it will notify Concept promptly and in any event within 5 Business Days of receipt. In the event that the Customer acting reasonably disputes an invoice or any part of it, the Customer will pay the undisputed part of such invoice in accordance with these Conditions and the disputed part of the invoice will be dealt with in accordance with the process set out in clause 15 and any amount of the disputed part of the invoice due following the process in clause 15 will be payable 14 days from resolution of the dispute as applicable.

## **7 Intellectual Property Rights**

- 7.1 Intellectual Property Rights arising out of the Services as detailed in the relevant SoW shall, further to payment of all sums due to Concept under the Contract, vest in the Customer.
- 7.2 The Customer grants to Concept a fully paid-up, non-exclusive, royalty-free licence to use, copy and modify:
  - 7.2.1 any materials provided by the Customer to Concept for the term of any SoW for the purpose of providing the Services to the Customer or its nominee; and
  - 7.2.1 any Intellectual Property Rights arising out of the Services for the purpose of providing other parts of the Services to the Customer or its nominee.
- 7.3 The Customer acknowledges and accepts that prior to entering into the Contract, Concept has developed tools, ideas, concepts, processes, methodologies, software and know-how ("**Concept Components**"), some of which Concept may utilise in connection with its provision of the Services. Concept will retain exclusive ownership of all such Concept Components and will be entitled to use the same in connection with its performance of Services for third parties. Subject to the Customer's compliance with these Conditions, Concept hereby grants the Customer a perpetual, irrevocable, non-transferable, non-exclusive, royalty free licence to use

any Concept Component incorporated in the Services to the fullest extent necessary for the Customer's use of the Services.

## 8 **Data protection**

Both parties will comply with all applicable requirements of the Data Protection Legislation together with the provisions of Schedule 2.

## 9 **Export**

9.1 Neither Party will in any circumstances export, directly or indirectly, any technical data acquired from the other Party under the Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

9.2 Each Party undertakes:

9.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to that in clause 9.1; and

9.2.2 if requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 10 **Change control**

10.1 Unless stated otherwise, Changes shall be dealt with in accordance with this clause 10.

10.2 Either Party may submit a written request for Change to the other Party in accordance with this clause 10 and the provisions contained in a SoW, but no Change will come into effect until a Change Control Note has been signed by the authorised representatives of both parties.

10.3 If the Customer requests a Change:

10.3.1 the Customer will submit a written request to Concept containing as much information as is necessary to enable Concept to prepare a Change Control Note; and

10.3.2 within 5 Business Days of receipt of a request, Concept will, unless otherwise agreed, send to the Customer a Change Control Note.

10.4 If Concept requests a Change, it will send to the Customer a Change Control Note.

10.5 A Change Control Note must contain sufficient information to enable the Customer to assess the Change, including as a minimum:

10.5.1 description of the Change;

10.5.2 details of the effect of the proposed Change on:

10.5.2.1 the Services;

10.5.2.2 the Charges;

10.5.2.3 any systems or operations of the Customer which communicate with, or are otherwise affected by, the Services; and

10.5.2.4 any other term of the Agreement or the relevant SoW;

10.5.3 provision for signature by the Customer and Concept.

10.6 If, following the Customer's receipt of a Change Control Note pursuant to clause 10.3 or clause 10.4:

10.6.1 the parties agree the terms of the relevant Change Control Note, they will sign it and that Change Control Note will amend the Agreement as detailed within the Change Control Note.

10.6.2 either Party does not agree to any term of the Change Control Note, then the other Party may refer the disagreement to be dealt with in accordance with the dispute resolution procedure at clause 15.

- 10.7 Save where agreed otherwise between the parties in context of a significant change to scope, each Party will bear its own costs in relation to compliance with the change control procedure set out in this clause 10.
- 11 **Limitation of liability**
- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 11.**
- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in the Agreement limits any liability which cannot legally be limited, including (but not limited to) liability for:
- 11.2.1 death or personal injury caused by negligence;
- 11.2.2 fraud or fraudulent misrepresentation; and
- 11.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.3 Subject to clause 11.2, Concept's total liability to the Customer in respect of all breaches of duty occurring within any Contract Year will not exceed the Cap.
- 11.4 In clause 11.3:
- 11.4.1 **Cap:** The Cap is 75% of the Total Charges as set out in a relevant SoW in the Contract Year in which the breaches occurred.
- 11.4.2 **Contract Year:** A Contract Year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- 11.4.3 **Total Charges:** This means all sums paid by the Customer and all sums payable under a relevant SoW in respect of goods and services actually supplied by Concept, whether or not invoiced to the Customer.
- 11.5 Save where expressly provided to the contrary in a SoW the following types of loss and specific loss are wholly excluded by the parties:
- 11.5.1 loss of profits
- 11.5.2 loss of sales or business.
- 11.5.3 loss of agreements or contracts.
- 11.5.4 loss of anticipated savings.
- 11.5.5 loss of use or corruption of software, data or information.
- 11.5.6 loss of or damage to goodwill; and
- 11.5.7 indirect or consequential loss.
- 11.6 Concept has given commitments as to compliance of the Services with relevant SoWs in clause 4. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 11.7 Unless the Customer notifies Concept that it intends to make a claim in respect of an event within the notice period, Concept will have no liability for that event. The notice period for an event will start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and will expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12 **Termination**
- 12.1 Without affecting any other right or remedy available to it, either Party may terminate either the Agreement with immediate effect by giving written notice to the other Party if:
- 12.1.1 the other Party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing to do so;

- 12.1.2 the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 12.1.3 the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 12.1.4 the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, Concept may terminate a SoW with immediate effect by giving written notice to the Customer if:
  - 12.2.1 the Customer fails to pay any amount due under the Agreement on the due date for payment; or
  - 12.2.2 there is a change of control of the Customer.
- 12.3 Without affecting any other right or remedy available to it, Concept may suspend the supply of Services and cease related provision of the Licensed Software (if applicable) under a SoW or any other contract between the Customer and Concept if:
  - 12.3.1 the Customer fails to pay any amount due under the Agreement (or any other agreement between the parties) on the due date for payment;
  - 12.3.2 the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; or
  - 12.3.3 Concept reasonably believes that the Customer is about to become subject to any of them.
- 12.4 Any termination or expiry of the Agreement shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or continuation in force of any other clauses or provisions of the Agreement which are expressly or by implication intended to come into force or continue in force on or after termination of the Agreement.
- 13 Consequences of termination**
- 13.1 On termination of the Agreement:
  - 13.1.1 the Customer will immediately pay to Concept all of Concept's outstanding unpaid invoices and interest under the Agreement and, in respect of Services supplied but for which no invoice has been submitted, Concept will submit an invoice, which will be payable by the Customer immediately on receipt;
  - 13.1.2 the Customer will return all of Concept Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Concept may enter the Customer's premises and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.
- 13.2 Termination of the Agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- 13.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement will remain in full force and effect.
- 14 Force majeure**
- 14.1 Provided it has complied with clause 14.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by a Force Majeure Event (the "Affected Party"), the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.2 The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

- 14.3 The Affected Party shall:
- 14.3.1 as soon as reasonably practicable after the start of the Force Majeure Event notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - 14.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 45 days, the Party not affected by the Force Majeure Event may terminate the Agreement by giving 45 days' written notice to the Affected Party.

## 15 **Dispute resolution**

- 15.1 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of the same ("Dispute"), then, except as expressly provided in the Agreement, the parties will follow the procedure set out in this clause 15:
- 15.1.1 either Party will give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, Concept and the Customer will attempt in good faith to resolve the Dispute;
  - 15.1.2 if Concept and the Customer are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute will be referred to a director of Concept and a director of the Customer who will attempt in good faith to resolve it; and
  - 15.1.3 if the respective directors of Concept and the Customer are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 60 days of service of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing ("**ADR Notice**") to the other Party to the Dispute, referring the dispute to mediation. Unless otherwise agreed between the parties, the mediation will start not later than 7 days after the date of the ADR Notice.
- 15.2 The commencement of mediation will not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 27 which clause will apply at all times.
- 15.3 If the Dispute is not resolved within 40 days after service of the ADR notice or either Party fails to participate or ceases to participate in the mediation before the expiry of that 40-day period, or the mediation terminates before the expiry of that 40-day period, the Dispute will be finally resolved by the courts of England and Wales in accordance with clause 27.

## 16 **Assignment and other dealings**

Neither Party will without the other's consent assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

## 17 **Confidentiality**

- 17.1 Each Party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by this clause 17. The Customer will treat as confidential all confidential information of Concept contained or embodied in the Documents or otherwise supplied to the Customer pursuant to the Agreement. Each Party may disclose the other Party's confidential information (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Agreement and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each Party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 17.1. Neither Party will use the other Party's confidential information for any purpose other than to perform its obligations under the Agreement. In the event of any conflict between the provisions of the Agreement and any non-disclosure agreement entered into solely by the parties prior to the entire execution of the Agreement, the Agreement shall take precedence.



- 17.2 Notwithstanding the provisions of clause 17.1, the Customer shall not unreasonably refuse to agree to the following:
- 17.2.1 That Concept may announce the fact that it is providing the Services to the Customer;
  - 17.2.2 That Concept may prepare press releases and appropriate publicity in relation to the Services;
  - 17.2.3 To assist Concept with the preparation of a case study following completion of all or part of the Services;
  - 17.2.4 That all material which has been authorised by the Customer may be used by Concept for the purpose of marketing (including being used on Concept's website, social media channels and the Internet generally);
  - 17.2.5 To act as a reference site.

## **18 Non-solicitation**

- 18.1 The Customer shall not i) during the term of the Agreement or any signed SoW; and ii) for a period of six (6) months thereafter:
- 18.1.1 howsoever caused, directly or indirectly solicit or entice away or endeavour to solicit or entice away from Concept any employee of or contractor to Concept who has been engaged in the provision of the Services or the performance of the Agreement; or
  - 18.1.2 in competition with the other and for services which are the same or similar to the Services under the corresponding SoW, solicit business from or have any dealings or contacts with, any person, firm, company or organisation which Concept has had contact or dealings with exclusively through the provision of the Services under the Agreement.
- 18.2 In the event that the Customer is found to be in breach of clause 18.1 then the Customer shall pay Concept by way of liquidated damages an amount equal to, as at the time of the breach i) in the case of an employee, their gross annual salary or ii) in the case of a contractor, 12 x monthly payments made in respect of services they have provided. This provision shall be without prejudice to the Concept's right to seek injunctive relief.

## **19 Entire agreement.**

The Agreement and the documents incorporated by reference into it, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into the Agreement it does not rely on and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement or any document incorporated into it. Each Party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement. Nothing in this clause 19 will limit or exclude any liability for fraud.

## **20 Variation**

Except as set out in the Agreement, no variation of the Agreement will be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **21 Waiver**

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Agreement or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law will prevent or restrict the further exercise of that or any other right or remedy.

## **22 Severance**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22 will not affect the validity and enforceability of the rest of the Agreement.

## **23 Notices**

Any notice given to a Party under or in connection with the Agreement will be in writing and will be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case). Any notice will be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address and, if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service. This clause 23 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

#### **24 Relationship of Parties**

Nothing in the Agreement is intended to, or shall operate to, create a partnership between its Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other Party in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### **25 Third-party rights**

Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

#### **26 Governing law**

The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales.

#### **27 Jurisdiction.**

Each Party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

In the Agreement, the following definitions shall apply:

**Agreement:** the agreement between Concept and the Customer for the supply of Services, comprising these Conditions and any related SoW incorporating such Conditions therein together with any additional terms or conditions subsequently entered into pursuant to such provisions.

**Applicable Data Protection Laws:** means:

- a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of Personal Data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of Personal Data.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England.

**Change:** an amendment to the scope, nature or execution of the Services under the Agreement.

**Change Control Note:** the written record of any Change agreed or to be agreed by the parties pursuant to the change control procedure in clause 10.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6 and a SoW.

**Concept Materials:** has the meaning set out in clause 5.1.10.

**Conditions:** the Conditions comprising clauses 1-27 and together with all Schedules, as varied from time to time in accordance with clause 20.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** the person or firm who purchases Services from Concept.

**Customer Default:** has the meaning set out in clause 5.3.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party.

**Deliverables:** the deliverables set out in a SoW.

**Developed Software:** software programs developed by Concept specifically for the Customer as detailed in a SoW.

**Documents:** the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by Concept as specified in a SoW.

**Force Majeure Event** means any circumstance not within a Party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts; and

(h) interruption or failure of utility service.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software and database rights.

**Licensed Software:** the Concept pre-existing Software and Product Customisations.

**Normal Working Hours:** the hours 9:00am to 5:30pm GMT on a Business Day.

**Product Customisations:** changes made, or to be made, to Pre-existing Software or Third-Party Software as listed in a relevant SoW.

**Services:** all of the services, including the Deliverables, supplied by Concept to the Customer as set out in a relevant SoW.

**Statement of Work / SoW:** the description or specification of the Services agreed in writing between Concept and the Customer.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

## SCHEDULE 2

### DATA PROTECTION

1. For the purposes of this Schedule 2, the terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach and Processing shall have the meaning given to them in the UK GDPR.
2. Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Schedule 2 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 2.1. The parties have determined that, for the purposes of Applicable Data Protection Laws:
  - 2.1.1. Concept shall process Personal Data as notified to the Customer in the form set out in Annex A as Processor on behalf of the Customer; and
  - 2.1.2. Concept shall act as Controller of the Personal Data set out therein.
- 2.2. Should the determination in paragraph 2.1 change, the parties shall use all reasonable endeavours to make any changes that are necessary to this Schedule 2 and the notification in the form set out in Annex A.
3. The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by Concept in connection with the Processing of Supplier Personal Data.
4. Without prejudice to the generality of paragraph 2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Concept Personal Data and Customer Personal Data to Concept or lawful collection of the same by Concept for the duration and purposes of the Agreement or any continuing SoW.
5. In relation to the Customer Personal Data, the notification in the form set out in Annex A shall set out the scope, nature and purpose of Processing by Concept, the duration of the Processing and the types of Personal Data and categories of Data Subject.
6. Without prejudice to the generality of paragraph 2, Concept shall, in relation to Customer Personal Data:
  - 6.1. process that Customer Personal Data only on the documented instructions of the Customer unless Concept is required by Applicable Laws to otherwise process that Customer Personal Data (**Purpose**). Where Concept is relying on Applicable Laws as the basis for Processing Customer Processor Data, Concept shall notify the Customer of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. Concept shall inform the Customer if, in the opinion of Concept, the instructions of the Customer infringe Applicable Data Protection Laws;
  - 6.2. implement the technical and organisational measures set out in the notification in the form set out in Annex A to protect against unauthorised or unlawful Processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 6.3. ensure that any personnel engaged and authorised by Concept to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
  - 6.4. assist the Customer insofar as this is possible (taking into account the nature of the Processing and the information available to Concept), and at the Customer's cost and written request, in responding to any request from a Data Subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, Breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 6.5. notify the Customer without undue delay on becoming aware of a Personal Data Breach involving the Customer Personal Data;

- 6.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the Agreement unless Concept is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this paragraph 6.6, Customer Personal Data shall be considered deleted where it is put beyond further use by Concept; and
- 6.7 maintain records to demonstrate its compliance with this Schedule 2.
7. The Customer provides its prior, general authorisation for Concept to:
- 7.1. appoint Processors to process the Customer Personal Data, provided that Concept:
- 7.1.1. shall ensure that the terms on which it appoints such Processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Concept in this Schedule 2;
  - 7.1.2. shall remain responsible for the acts and omission of any such Processor as if they were the acts and omissions of Concept; and
  - 7.1.3. shall inform the Customer of any intended changes concerning the addition or replacement of the Processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to Concept's reasonable satisfaction, that the objection is due to an actual or likely Breach of Applicable Data Protection Law, the Customer shall indemnify Concept for any losses, damages, costs (including legal fees) and expenses suffered by Concept in accommodating the objection.
- 7.2. transfer Customer Personal Data outside the UK as required for the Purpose, provided that Concept shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of Concept, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
8. Either Party may, at any time on not less than 30 days' notice, revise this Schedule 2 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).
9. Concept's liability for losses arising from breaches of this Schedule 2 is as set out in clause 11.

## Annex A to SCHEDULE 2

### Template

<b>1</b>	<b>Parties' roles</b>	
	1.1	[Where Concept acts as a processor] [ ]
	1.2	[Where Concept acts as a controller] [ ]
<b>2</b>	<b>Particulars of Processing</b>	
	2.1	Scope [ ]
	2.2	Nature [ ]
	2.3	Purpose of Processing [ ]
	2.4	Duration of Processing [ ]
	2.5	Types of Personal Data [ ]
	2.6	Categories of Data Subject [ ]
<b>3</b>	<b>Technical and organisational measures.</b>	
	[ ]	