

ANDIGITAL LIMITED
BUSINESS TERMS (“Terms of Business”)

Definitions

(i)	“Affiliate”	means in relation to the Parties any company, partnership or other entity which from time to time directly or indirectly Controls, is Controlled by or is under common Control with that Party, including any subsidiary or holding company of that Party, (as those expressions are defined in sections 1159 and 1162 of the Companies Act 2006 (as amended).)
(ii)	“ANDigital”	ANDigital Limited incorporated and registered in England and Wales with company number 8761455 whose registered office is at 3 Concorde Park, Concorde Road, Maidenhead, Berkshire, England, SL6 4BY
(iii)	“Client”	[full legal entity name] incorporated and registered in England and Wales with company number [company number] whose registered office is at [address]
(iv)	“Party” and “Parties”	ANDigital and Client may be referred to individually as a ‘Party’ and collectively as the ‘Parties’
(v)	“Professional”	An individual working for or on-behalf of ANDigital providing billable services to the Client.
(vi)	“Services”	the services to be provided by ANDigital to the Client under the Terms of Business and as set out in the Statements of Work, or as may be amended or added to from time to time by the Parties in writing
(vii)	“Statement of Work”	statement of work executed by the Parties in accordance with clause 2, setting out or referencing the particular Services to be provided by ANDigital under the terms of this Agreement.

Section 1. Entire Agreement

1. The Agreement (being these Terms of Business and the Statement of Work) constitutes the entire understanding and agreement between the Parties and supersedes and extinguishes all prior oral and written communications relating thereto. The terms of this Agreement may be amended, modified or changed (including changes in scope) only in writing when signed by both parties. If there is a conflict between the Terms of Business and the "Statement of Work" which precedes these Terms of Business, the Terms of Business shall prevail. Terms defined in the Statement of Work shall have the same meaning when used in these Terms of Business.
2. No antecedent negotiations between us shall be construed as a representation inducing this or any other agreement.
3. Nothing in this Section 1 of these Terms of Business shall limit or exclude either Party's liability to the other for any fraudulent misrepresentations.

Section 2. Services

1. ANDigital will provide the Services described in the Statement of Work in accordance with and subject to the provisions of the Agreement.
2. Either Party may request changes to the Services or changes to any other aspect of the Agreement. Requests for changes must be supported by sufficient detail to enable the other Party to assess the impact of the requested change on the cost, timetable and any other relevant aspect of the Agreement. Both parties agree to work together to consider and, if appropriate, agree any changes. Until a change is agreed in writing both parties will continue to act in accordance with the latest agreed version of the Agreement.
3. ANDigital will use all reasonable efforts to carry out its obligations in accordance with any timetable referred to in the Statement of Work or otherwise specified by the Client or ANDigital. However, unless both parties specifically agree otherwise in writing, all dates given by ANDigital or specified by the Client, including dates contained in any timetable in the Statement of Work, are intended for planning and estimating purposes only and are not contractually binding.
4. Each Party will name a representative (the “Representatives”) who will be responsible for managing issues relating to the day-to-day performance of the Agreement, including meeting at regular intervals to discuss and minute the progress of the Services. The Representatives are named in the Statement of Work.

Section 3. Client Responsibilities

1. ANDigital delivery of the Services and the fees charged are dependent on (i) the Client undertaking the Client responsibilities as set out in the Statement of Work; (ii) the accuracy of the Assumptions as set out in the Statement of Work; (iii) the Client performing its obligations under this Agreement; (iv) the Client providing ANDigital with such information as ANDigital shall reasonably request to enable it to perform its obligations under this Agreement; and (v) the Client providing timely decisions and obtaining required management approvals.

2. The Client will provide ANDigital and its personnel with full and prompt access at all reasonable times to the premises, directors and staff of the Client and its Affiliates associated with the Service and to the other advisers to the Client. ANDigital will also be given full access to data and information as it may reasonably require in order to perform the Services. In addition, the Client agrees to keep ANDigital promptly informed of any material developments or proposals in relation to the business or operations of the Client and its Affiliates where these may have an effect upon the Services.
3. Client agrees that ANDigital will be entitled to rely on all the Client's decisions and approvals given in connection with the Services. Further, the Client understands that ANDigital is relying on the information provided by or on behalf of the Client and the Client represents that such information is or will be true, accurate and complete. ANDigital will not be liable for any loss, damage or expense arising from the Client's failure or delay in supplying or ANDigital reliance on any information or materials supplied by or on behalf of the Client or any inaccuracy or other deficiency in such information or materials.
4. All surveys, forecasts, projections and recommendations made in any report, presentation, letter or other materials provided by ANDigital in connection with the Services are made by ANDigital in good faith and on the basis of the information supplied to ANDigital at the time. However, ANDigital does not guarantee and ANDigital takes no responsibility for their achievement or continuing applicability, because the actual outcome will depend on future events and circumstances and matters over which ANDigital has no control, including the actions of the Client's management and staff. It will be the responsibility of the Client's management to make implementation decisions, if any, and to determine further courses of action with respect to any matters addressed in the Services provided by ANDigital. Whilst ANDigital may assist in the implementation, ultimately this is the sole responsibility of the management of the Client.
5. The Client and ANDigital will each be responsible for ensuring that their respective staff involved with the Service have the appropriate skills and experience. If any of ANDigital or the Client's staff fail to perform as required additional or replacement staff will be provided as the other Party may reasonably request.
6. Where our Professionals are required to work on Client premises the Client will ensure that such personnel are provided without charge with a suitable office environment and facilities including admin support, IT and network infrastructure access and support.
7. Where the Client is using third parties to provide information, materials or support for the Service, or is employing other suppliers whose work may affect ANDigital ability to perform the Services, the Client will be responsible for the management of such persons and their performance, including the timeliness and quality of their input and work.
8. Our Professionals will report directly to a nominated Client person, who will be responsible for providing appropriate management, supervision and quality assurance on their work. Accordingly, our Professionals will not be subject to ANDigital's own quality control procedures other than through coaching, professional and personal support from our service delivery and coaching staff. The Client will honour holiday, training and other reasonable commitments for the Professional. Every effort will be made to notify you in advance of any such commitments and to minimise their impact on the Service.

Section 4. Intellectual Property Rights

1. ANDigital shall own and retain all ownership and intellectual property rights in all its existing reports, materials, documentation, software, system interfaces, templates, methodologies and processes, and ideas, concepts and techniques that ANDigital may use in connection with this Agreement.
2. Subject to Clause 4.1, ANDigital hereby assigns to the Client copyright and related rights, patents, rights to inventions, trade-marks, trade names and domain names, rights in designs, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered in the Deliverables and in all other reports, materials, documentation, software, system interfaces, templates, methodologies and processes, and ideas, concepts and techniques that ANDigital may develop under this Agreement.
3. The Client grants ANDigital and its sub-contractors a revocable, non-transferable, non-exclusive licence during the terms of the Service to make use of the Clients' intellectual and other property solely for the purpose of providing the Services and performing its obligations under the Statement of Work.
4. This Agreement will not prevent or restrict ANDigital from providing services to other clients which are the same or similar to the Services or using for any purpose ANDigital considers appropriate any techniques, ideas, concepts or know how gained or arising from the performance of the Services, subject to the obligations of confidentiality set out in Clause 6.

Section 5. Payment of Fees

1. The Services may be provided on a "Time and Materials" or on a "Fixed Price" fee basis. The Statement of Work will state the applicable fee rates for Time and Materials charging or the applicable Fixed Price. Where the Statement of Work does not expressly state which charging basis applies the Time and Materials charging will apply.
2. Where Time and Materials charging applies, charges will be calculated on the basis of the time spent by ANDigital personnel in connection with performing the Services at their respective rates. The charges will also include time spent by personnel travelling which is in excess of their normal work journey time. A normal working day is a 7.5-hour day worked between the hours of 09:00 and 17:30 on weekdays excluding public holidays. Where weekend working or being on call is required, additional hours will be charged at a rate of 2.0 x agreed rate / 7.5 standard hrs.
3. Where Time and Materials charging applies, prior to the invoice being created the Client and ANDigital will agree the time spent for each individual Professional against which the fees for that period will be calculated.
4. If ANDigital incurs extra costs or the scope of the Services is increased by any delay, variation, interruption or suspension of work arising from the default or instructions of the Client and/or those persons for which the Client is responsible, and provided

ANDigital will advise the Client of such extra costs or increased scope as soon as reasonably practical on becoming aware of them (and where reasonably practicable before any extra costs are incurred), then ANDigital may increase the Fixed Price to reflect such extra costs properly incurred or increased scope and the Client will pay the increased Fixed Price.

5. Any estimate given by ANDigital of any charge or fees, whether for planning or any other purpose, is given in good faith but will not be binding or constitute a fixed estimate but for the avoidance of doubt it is agreed that the Fixed Price is not an estimate.
6. All charges are exclusive of out of pocket expenses unless the Statement of Work states otherwise. The Client agrees to pay expenses incurred on report production, travel and subsistence, and on goods and services purchased on the Client's behalf, which will be billed at cost. Any special expense arrangements will be agreed and set out in the Statement of Work.
7. Invoices will be issued in accordance with any payment plan set out in the Statement of Work, or otherwise in arrears on the third Friday of the month. Unless the Statement of Work states otherwise, all payments will be in Pounds Sterling. All invoices will be due for payment within 21 days of receipt by the Client. If the Client disputes any portion of an invoice it shall notify ANDigital within 7 days of receipt of the disputed invoice and pay the undisputed portion of that invoice. Should any invoice remain unpaid for more than 7 days from the due date ANDigital reserves the right, without prejudice to any other right or remedy, to suspend the provision of the Services or any part and/or to charge interest on a day to day basis on amounts overdue until payment in full is received at a rate of 4% above the annual base rate of the Bank of England from time to time.
8. ANDigital reserves the right to deliver Services by instalments and render a separate invoice in respect of each such instalment. Any delay in the provision of such Services, or failure to deliver any further instalment or instalments, shall not entitle the Client to reject the Services of any other instalment or to withhold payment in respect of any other instalment previously delivered.
9. ANDigital rates shall be subject to an annual adjustment on the 1st January of each year of this Agreement. The increase shall be a maximum of 2% plus the percentage change in the Consumer Price Index (CPI) over the most recent twelve (12) months for which published data is available.
10. ANDigital may assign to its banker, RBS Invoice Finance Limited (or any successor banker or finance provider of ANDigital), its accounts receivable, including those arising from the sale of Services supplied by ANDigital to the Client.

Section 6. Confidentiality

1. Subject to clause 6.2, each Party agrees where it is in possession of information about or relating specifically to the other and/or any Affiliates of the other (including its/their business) that is by its nature confidential, or is designated as such (whether in writing or orally) by the other or ought reasonably to be regarded as such including this Agreement ("Confidential Information"), it shall (i) keep it confidential; (ii) use it only in connection with performing its obligations and/or exercising its rights under this Agreement; and (iii) not to disclose it to any other person without the other's prior written consent. The undertaking by ANDigital under this clause 6.1 applies to information about or relating specifically to the Client and/or any of its Affiliates (including its/their business) comprised in the Deliverables which shall be deemed to be and is designated as the Confidential Information of the Client. ANDigital shall use Confidential Information of the Client solely for the purpose of performing the Services under this Agreement.
2. The undertakings under this clause 6.1 will not apply to a Party in relation to information to the extent that that Party can show that such information is or becomes generally publicly available for reasons not due to that Party's default, was possessed by that Party without any obligation of confidence prior to this Agreement (or prior to being designated as Confidential Information), or is lawfully acquired by that Party from a third Party who is under no obligation of confidence, or which is or has been developed by that Party independently of this Agreement.
3. Nothing in this Agreement will prevent either Party from being entitled to disclose Confidential Information to its legal advisors, to protect its own legitimate interests and to comply with any legal, professional or regulatory requirement. You agree to reimburse any reasonable costs we may incur in complying with any such disclosure requirement relating to any of our Services to you imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against us, provided that we notify you promptly and, where reasonably or legally possible, prior to disclosure.
4. You agree that we may share Confidential Information with any subcontractors we use to provide the Services (or more generally to support our office administration) on the understanding that they will treat the information as Confidential Information in accordance with the provisions of this Agreement. We shall ensure that each sub-contractor complies with the obligations imposed on ANDigital under clause 6 as if it were ANDigital.
5. Either Party may disclose Confidential Information, and the Client and its Affiliates may disclose information comprised in any of the Deliverables which it would otherwise not be entitled to disclose but for this Clause 6.5, that it is required to disclose by law or any competent regulatory body or recognised investment exchange provided that, so far as is practicable and lawful, the disclosure shall be made only after consultation with the other Party and after taking into account the other Party's reasonable requirements as to timing, content and manner of communication.
6. Nothing in this Agreement will prevent or restrict ANDigital from providing services to other clients (including services which are the same or similar to the Services) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing the Services to the Client even if those other clients' interests are in competition with your own provided that ANDigital complies with clause 6.1 and does not infringe any Intellectual Property Rights of the Client. Equally, you agree that to the extent that we possess information obtained under an obligation of confidentiality to another client or other third Party, we are not obliged to disclose it to you or make use of it for your benefit, however relevant it may be to the Services.
7. Either Party shall be able to reference the other Party's name for marketing purposes subject always to clause 6.1.

Section 7. Warranty

1. ANDigital warrant that the Services will be performed with reasonable care in a diligent and competent manner. ANDigital will re-perform on the terms of this Agreement any work which is not in compliance with this warranty without further liability for such non-compliance, provided that the Client gives ANDigital written notice of any non-compliance within fourteen days (14) after the Services are performed.
2. ANDigital does not warrant and shall not be responsible for any third Party products or services. Your sole and exclusive rights and remedies with respect to claims arising out of or relating to any third Party product or services will be against the third Party and not against us. We do agree, however, to assign to you any assignable warranties we may receive from any such third Party.
3. The representations, warranties, terms and conditions set out in this Agreement are the parties' only representations, warranties, terms and conditions relating to the Services and are made expressly in place of and to the exclusion (to the fullest extent permitted by law) of all other representations, warranties, terms and conditions, express or implied, by statute or otherwise, including without limitation any implied warranties, terms or conditions as to performance, fitness for a particular purpose, merchantability, satisfactory quality or otherwise and are subject to the limitations on liability set out herein.

Section 8. Risk Allocation and Indemnity

1. Because of the importance to our work of the information and representations supplied to us by the directors, employees and agents of the Client, ANDigital shall not, save to the extent that the law requires otherwise, be held responsible or liable for any loss, damage, cost, charge, expense (including interest) or other liability (together "Losses") whatsoever and howsoever caused, incurred, sustained or arising if information material to ANDigital work is withheld or concealed from ANDigital or misrepresented to ANDigital, except and only to the extent finally determined to have resulted from ANDigital knowing disregard of matters of which ANDigital have actual knowledge, or from our bad faith.
2. Nothing in this Agreement shall exclude, restrict (or prevent a claim form being brought in respect of) any liability arising from death or personal injury resulting from negligence, fraud or other liabilities which cannot be lawfully excluded or limited.
3. Subject to clauses 8.2 and 8.4 and ANDigital's total liability of whatever nature, whether in contract, tort (including, without limitation, negligence), under statute or otherwise for any and all Losses arising from or in any way in connection with this Agreement shall be limited to the fees paid for the portion of the Services giving rise to the liability.
4. In no event shall ANDigital be liable, whether in contract, tort (including, without limitation, negligence), under statute or otherwise for (i) loss of profit, goodwill, business opportunity or anticipated savings, loss of or corruption to data, loss of revenues or wasted management or staff time; or (ii) incidental, special punitive, exemplary, indirect or consequential loss or damage; (together Excluded Losses) which you may suffer, howsoever caused and whether or not ANDigital knew or ought to have known, that the Excluded Losses would be likely to be suffered by the Client.
5. Any action brought by you against ANDigital must be brought within eighteen (18) months after the cause of action arises.
6. As further consideration for ANDigital provision of the Services set out in this Agreement, the Client agrees to indemnify and hold harmless ANDigital for itself and as trustee for each of, its directors and employees against all claims and proceedings brought by any third Party and all losses, damages, costs and expenses relating thereto, whatsoever and howsoever caused, which ANDigital, its directors and employees, or any of them, may suffer arising from, or in connection with, the provision of the Services, except and only to the extent finally determined to have resulted primarily from ANDigital knowing disregard of matters of which we have actual knowledge, or from our bad faith.
7. Each Party shall maintain throughout the term of this Agreement, and for six (6) years thereafter, insurance cover with a reputable insurer in relation to their risks and liabilities under this Agreement.

Section 9. Personnel

1. Whilst ANDigital will attempt to comply with the Client's request for specific individuals, the appointment of all personnel to perform the Services and the nature and duration of their assignment shall be made as ANDigital considers appropriate. ANDigital may at any time replace or reassign any personnel assigned by it to the Services but any replacement personnel appointed by ANDigital will be no less experienced or qualified than those personnel they are replacing and will be subject to the prior approval of the Client, such approval not to be unreasonably withheld or delayed.
2. During the provision of the Services, and for a period of twelve (12) months following completion, or termination of the provision, of the Services, neither Party will either directly or indirectly solicit or employ, the personnel of the other Party engaged directly or indirectly in the project. Breach of this condition will render the defaulting Party liable to pay the other Party liquidated damages equal to 1.5 times the total annual remuneration of the individual concerned on the date that the individual gives notice to its employer, but without prejudice to the innocent Party's other rights, including injunctive relief. Each Party should inform the other if a current employee has applied and the breach is likely to occur at the earliest opportunity.
3. The Client agrees that, having regard to ANDigital's interest in limiting the personal liability and exposure to litigation of employees, the Client will not bring any claim in respect of losses against any of ANDigital employees personally.
4. ANDigital may sub-contract the provision of the Services or any part to any person including associated partners and companies, but such sub-contracting will not relieve ANDigital from its obligations under this Agreement and ANDigital accepts that it takes full responsibility for the actions of such sub-contractors.

Section 10. Termination

1. The Agreement may be terminated by either Party on written notice in the event (i) the other Party fails to comply with the terms of the Agreement and the failure, if capable of remedy, is not remedied within 30 days following receipt of written notice specifying the failure; or (ii) the other Party is unable to pay its debts or has a receiver, administrator, administrative receiver or liquidator appointed or calls a meeting of its creditors or ceases for any other reason to carry on business or in the reasonable opinion of the other Party any of these events appears likely.
2. If ANDigital Services are terminated pursuant to this Clause 10 before completion of the Services all fees for time spent and expenses incurred by ANDigital in accordance with the Statement of Work up to the date of termination will be due and payable within 21 days of receipt of an invoice from ANDigital by the Client and where the services are on a Fixed Price basis, if ANDigital and the Client are unable to agree the fees payable in the event of such early termination the Client will pay ANDigital all sums due at the date of termination in accordance with the payment plan set out in the Statement of Work together with fees on a Time and Materials basis for Services provided during the termination notice period up to the date of termination.
3. Except for matters related to confidentiality or intellectual property rights, the Parties will first attempt to resolve any dispute or alleged breach internally by escalating it through management, and, prior to pursuing litigation, use a mutually acceptable alternative dispute resolution process.
4. The Agreement may be terminated by either Party giving a minimum of 2 weeks notice in writing to the other Party.
5. Termination by either Party pursuant to this Clause 10 will not affect rights and obligations which have already accrued to the parties hereunder prior to the termination.

Section 11. Data Protection

1. Each Party shall comply with their respective obligations under Data Protection Legislation in respect of personal data processed by it in connection with the Services ("Personal Data").
2. Data Protection Legislation means (without limitation) the United Kingdom General Data Protection Regulation, Retained Regulation (EU) 2016/679 (UK GDPR), the Data Protection Act 2018, and the Privacy and Electronic Communications Regulations (2003/2426) (as amended) (PECR); together with all other applicable legislation relating to privacy or data protection including any statute or statutory provision which amends, extends, consolidates or replaces the same. The terms "personal data", "data subject", "controller", "processor", and "process" (and its derivatives) shall have the meanings given to them in the Data Protection Legislation.
3. The Client shall collect any necessary permission, provide any necessary notice and do all such other things as are required under the Data Protection Legislation in order for it to disclose Personal Data to ANDigital for the purposes required to perform the Services as set out in the Statement of Work.
4. The Client acknowledges that ANDigital processes Personal Data as a controller for the purposes of (i) applicable legal, professional or regulatory requirements; (ii) requests and communications from competent authorities; and (iii) administrative, financial accounting, risk analysis and client relationship purposes.
6. Where acting as a controller, ANDigital shall process the Personal Data as reasonably required to provide the Services, meet its legal or regulatory obligations or for other reasonable business purposes (including administration) and may disclose Personal Data to any third parties including its subcontractors regulatory bodies and any Party provided that such disclosure is reasonably required in connection with such purposes and is at all times in compliance with Data Protection Legislation.
7. When acting as a Processor, ANDigital shall only process Personal Data (a) to the extent necessary to provide the Services; (b) in accordance with the instructions of the Client (save to the extent, in the opinion of ANDigital, such instructions infringe the Data Protection Legislation, in which case ANDigital shall notify the client); or (c) as required by any competent authority or applicable law.

Section 12. Compliance with Legislation

1. Each Party shall comply with the Bribery Act 2010 and all other applicable UK legislation, regulations and codes on relation to bribery and corruption (the "Bribery Laws"), including ensuring that it has in place adequate procedures to ensure compliance with the Bribery Laws and each Party shall ensure that all of that Party's personnel, all others associated with that Party and all of that Party's sub-contractors involved in performing the Services or otherwise involved with the Agreement so comply.
2. Each Party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in 12.1 above
3. Each Party shall, and shall procure that it and any other person who performs Services and/or supplies goods in relation to this Agreement shall (i) comply with all applicable law relating to Slavery and human trafficking including the Modern Slavery Act 2015 and (ii) not take or knowingly permit any action to be taken that would or might cause or lead the other Party to be in violation of any modern slavery legislation
4. Each Party represents, warrants and undertakes to the other Party that neither it nor any other person in its supply chain uses trafficked, bonded, child or forced labour or has attempted to use trafficked, bonded, child or forced labour within its supply chain
5. Each Party shall perform its obligations under this Agreement in accordance with the Equality Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to equality and diversity and shall take all necessary steps to prevent unlawful discrimination

Section 13. General

- 1. Neither Party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.
- 2. The benefit of this Agreement may not be assigned or otherwise transferred without the prior express written consent of the other Party, save that ANDigital may assign the benefit of this Agreement to an Affiliate of its international organisation, and may use subcontractors to provide the Services.
- 3. Any notices given pursuant to this Agreement shall be in writing, addressed to the relevant contact at the address of the relevant Party set forth in this Agreement (or as otherwise notified) (and in the case of ANDigital as recipient, with a copy sent by email to legalnotices@and.digital), and shall be deemed received when delivered at that address or notices shall be sent by e-mail to legalnotices@and.digital in which case it shall be deemed received at the time e-mail was sent or the following business day if e-mail is sent after business hours or during non-working days (weekends, public holidays).
- 4. No term shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the Party granting such waiver or consent.
- 5. This Agreement does not make either Party an agent or legal representative of the other Party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.
- 6. If any provision or part of this Agreement is determined to be illegal or unenforceable, such provision or part will be deemed not to form part of this Agreement but the remainder of the Agreement will remain in full force and effect to the fullest extent permitted by law.
- 7. Any provision of this Agreement which by its nature extends beyond the expiry or termination of the arrangements set out in this Agreement will survive such expiration or termination.
- 8. Save in respect of any assignee of ANDigital pursuant to the provisions of subsection (3) above, nothing in this Agreement shall confer any rights on any third Party not being ANDigital or the Client. For the avoidance of doubt, any rights conferred on third parties pursuant to the Contracts (Rights of Third Parties) Act 1999 shall be excluded.
- 9. This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any disputes which may arise out of or in connection with this Agreement.

For and on behalf of
Client:

For and on behalf of
ANDigital Limited:

Name: _____

Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: ____