

Terms & Conditions

1. Definitions

1.1 "Shapecast" means Shapecast Limited.

1.2 "Client" means the individual, organisation, firm or company whose order for work has been accepted by Shapecast;

1.3 "Work" means only those services and or deliverables expressly described in the relevant Statement of Work or proposal documentation agreed in writing by both parties. Any services, deliverables, or activities not expressly included shall be deemed out of scope and subject to separate agreement and charges.

1.4 "Staff" means the individual(s) provided by Shapecast for the performance of the Work which may include Associates;

1.5 "Contract" means the contract for Work between Shapecast and the Client;

1.6 "Contract Price" means the price stated in the proposal or Statement of Work documentation.

1.6 "Statement of Work" means a document agreed in writing by both parties setting out the specific scope, deliverables, pricing, and timetable for the Work.

2. Formation and Incorporation

2.1 Subject to any variation under Condition 2.3, the Contract will be on the terms and conditions set out below to the exclusion of all other terms and conditions (including any terms and conditions which the Client purports to apply and any purchase order, confirmation of order or similar document).

2.2 Any variation to these terms and conditions and any representations about the Work shall have no effect unless expressly agreed in writing and signed by an authorised representative of Shapecast.

2.3 The Client must ensure that the terms of its order and any applicable specification are complete and accurate.

2.4 In the event of any conflict or inconsistency between these Terms and Conditions, any Statement of Work, proposal, or other contract document agreed between the parties, the following order of precedence shall apply in descending order

1. The Statement of Work
2. The proposal documentation
3. These Terms and Conditions

3. The Client agrees

3.1 If specified in the proposal suitable accommodation will be supplied by the Client at its expense for the Staff whilst they are performing the Work from the Client's premises.

3.2 Shapecast may change the staff during the course of the work at its discretion.

3.3 The Client shall provide Shapecast with all the information required by Shapecast for satisfactory completion of the work and agrees that Shapecast shall not be liable for the consequences of the Client's failure to do so.

3.4 Any change to the scope, deliverables, timetable, assumptions, dependencies, or Charges for the Work must be agreed in writing by both parties prior to implementation. Shapecast shall have no obligation to perform any work outside the agreed Work unless and until such change has been agreed in writing. Any agreed change may result in an adjustment to Charges, delivery timelines, or both.

4. Charges

4.1 The Charges for the Work shall be the Charges set out in the Shapecast proposal documentation for the Contract or Work assignment.

4.2 The Charges for the Work are exclusive of any Value Added Tax or any other applicable tax which the Client shall pay in addition when it is due to pay for the Work.

4.3 The Charges for any programme or programme module will be based on numbers of participants as detailed in the proposal or associated Statement of Work and should participant numbers be less than agreed for whatever reason schedule charges will be retained.

4.4 Shapecast reserves the right, on not less than one month's written notice and not earlier than six months following commencement of the Contract, to propose a variation to the level of Charges where such variation arises from changes to scope, assumptions, delivery requirements, regulatory obligations, or material increases in the cost of delivery.

4.5 Shapecast may invoice the Client for the Work at any time after commencement of the Work in line with the payment schedule as specified in the proposal.

4.6 Payment of the Charges for the Work is due 14 days after issue of invoice.

4.7 No payment shall have been deemed to have been received until Shapecast has received cleared funds.

4.8 All payments payable to Shapecast and under this Contract shall become due immediately upon termination of the Contract despite any other provision.

4.9 The Client shall make all payments due under this Contract without any deduction whether by way of set off, County claim or otherwise unless the Client has a valid Court Order requiring an amount equal to such deduction to be paid by Shapecast to the Client.

4.10 If the Client fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies), Shapecast may charge the Client interest (both before and after judgement) on the amount unpaid at the annual rate of 8% above HSBC Bank plc's base rate from time to time until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).

4.11 Unless otherwise specified, expenses will be charged at cost with no markup.

4.12 Travel time to client site is co-invested and charged at 50% of normal agreed day rates for each resource.

5. Cancellation and Postponement Charges

5.1 Any notice of cancellation or postponement must be received at the offices of Shapecast in writing.

5.2 The Work shall be regarded as a whole unless there are break points within it agreed in advance or it is divided into stages or where it is subject to periodic renewal. Where no such division is agreed in advance and stipulated in the Contract, and in the event of the Work or part of the Work being cancelled by the Client after commencement of the Contract the following cancellation charges will apply without prejudice to any other of its rights and remedies under the Contract:

5.2.1 Expenses incurred being all monies spent on behalf of the Client plus all spending irrevocably committed to on the Client's behalf by Shapecast up to the date of cancellation plus any cancellation charges that may be levied by third party suppliers as a result of cancellation;

5.2.2 One month or less notice prior to Work delivery commencement 100% of the Work based on the standard hourly rate or total fixed price of the Work whichever is the lesser;

5.2.3 Between one and two months' notice prior to Work delivery commencement 50% of the Work based on the standard hourly rate or total fixed price of the Work whichever is the lesser.

5.3 In the event of the Work or part of the Work being postponed after commencement of the Contract the charges as laid out in 5.2.1, 5.2.2 and 5.2.3 will apply without prejudice to any other of its rights and remedies under the Contract. However, if a revised date is agreed for the start/restart of the programme within 6 months of original start date, half the cancellation fee paid will be off set against Contract Price.

5.4 Subject to 5.2.1 where cancellation is by Shapecast, the Client shall be entitled to a refund of that proportion of any advance of fees that relate to the remaining part of the Contract.

6. Confidentiality

Each party shall keep confidential all confidential information received from the other party and shall not disclose such information to any third party except as required for the performance of the Work or as required by law. This obligation shall survive termination of the Contract for a period of five years. Upon termination, each party shall return or destroy all confidential information belonging to the other party on request. Disclosure may also be made to professional advisers provided they are subject to confidentiality obligations.

7. Copyright

The Client is hereby authorised to copy and use any reports or deliverables prepared specifically for it pursuant to the Work on a perpetual, royalty free basis for its internal business purposes only.

Nothing in this Contract transfers ownership of Shapecast's pre-existing methodologies, frameworks, models, tools, software, or know how. The Client is granted a non-exclusive, non-transferable licence to use any deliverables produced under the Work for its internal business purposes only.

Nothing in this Contract restricts Shapecast from using general knowledge, experience, skills, or ideas acquired during the performance of the Work for other clients, provided no confidential information of the Client is disclosed.

8. Liability

8.1 The following provisions and the provisions of conditions set out the entire liability of Shapecast (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

8.1.1 any breach of these terms and conditions; and

8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

8.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded from the Contract.

8.3 Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

THE CLIENT'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 8.4 AND 8.5.

8.4 Subject to conditions 8.2 and 8.3:

8.4.1 the Company's total liability in contract, tort (including negligence), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price, or such other amount as may be agreed in the relevant Statement of Work;

8.4.2 the Company shall not be liable to the Client by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of this Contract for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (whether or not caused by the negligence of the Company, its employees, agents or sub-contractors) which arise out of or in connection with the Contract.

8.5 The Client shall indemnify the Company against all liability, actions, proceedings, costs, claims, damages or demands in any way connected with this Contract brought or threatened to be brought against the Company by any third party except to the extent Shapecast is liable to the Client in accordance with these terms and conditions.

9. Termination

9.1 Either party shall be entitled to terminate the Contract at any time by giving not less than one month's notice to the other party. Termination under this clause shall not affect the Client's obligation to pay all Charges incurred,

committed, or accrued up to the effective date of termination.

9.2 Either party may at any time terminate the Contract immediately by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation (if an individual bankruptcy), makes a voluntary arrangement, has a receiver or liquidator or administrator appointed.

10. Non-Solicitation

The Client shall not, during the term of this Contract or for a period of twelve months following its termination, directly or indirectly solicit or offer employment or engagement to any member of Shapecast's Staff or any employee of Shapecast with whom the Client had material contact in connection with the Work, without Shapecast's prior written consent.

11. Data Protection

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This condition 11.1 is in addition to, and does not relieve, remove or replace, a party's obligations under the DPL. Data Protection Legislation or DPL means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018. "Sub-Processor" means any agent, subcontractor or other third party (excluding its employees) engaged by Shapecast for carrying out any processing activities on behalf of the Client in respect of the Personal Data (as defined in the DPL), including any substitute appointed to deliver the Services.

11.2 The parties acknowledge that conditions 11.2 to 11.4 apply where for the purposes of the DPL, the Client is the data controller and Shapecast is the data processor (where Data Controller and Data Processor have the meanings as defined in the DPL). Schedule 1 sets out the scope, nature, and purpose of processing by Shapecast, the duration of the processing, the types of personal data and categories of Data Subjects (as defined in the DPL).

11.3 Without prejudice to the generality of condition 11.1,

11.31 the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Shapecast for the duration and purposes of this agreement; and

11.32 Shapecast shall, in relation to any Personal Data processed in connection with the performance by Shapecast of its obligations under the SOW:

(a) process that Personal Data only on the written instructions of the Client unless Shapecast is required by the laws of any member of the European Union or by the laws of the European Union applicable to Shapecast to process Personal Data ("Applicable Laws").

Where Shapecast is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Shapecast shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Shapecast from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:

(i) the Client or Shapecast has provided appropriate safeguards in relation to the

transfer, as laid out in Appendix Standard Contractual Clauses

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) Shapecast complies with its obligations under the DPL by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) Shapecast complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the DPL with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Client without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement following an agreed data extraction period, unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this condition 11.3 and allow for audits by the Client.

11.4 The Client consents to Shapecast appointing a Sub-Processor as a third-party processor of Personal Data under the SOW. Shapecast confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially like those set out in condition 11.5. As between the Client and Shapecast, Shapecast shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this condition 11.4.

12. General

12.1 These Conditions constitute the entire agreement between the parties and supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

12.2 If a dispute should arise between the Client and Shapecast then all reasonable efforts shall be followed to resolve the dispute under these Conditions.

12.3 Any notice sent under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may be notified by each party from time to time.

12.4 No failure or delay by either party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right.

12.5 If any provision of this Contract is held by any authority to be invalid and unenforceable, the validity of the other provisions shall not be affected.

12.6 English law shall apply to the Contract, and the parties agree to the non-exclusive jurisdiction of the courts of England and Wales.

12.7 Neither party shall be liable for any failure or delay in performance of its obligations under this Contract where such failure or delay results from events beyond its reasonable control, provided that the affected party promptly notifies the other.