

Terms and Conditions

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1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (Conditions):

Additional Fees	fees that the Supplier may charge to the Customer over and above those quoted in the Services Order as set out in these Conditions, calculated in accordance with the Supplier's standard day rates, as amended from time to time;
Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
Charges	the charges payable by the Customer to the Supplier for the provision of the Services in accordance with clause Error! Reference source not found. ;
Contract	the contract between the Supplier and the Customer for the purchase of the Services and Deliverables (where relevant) in accordance with these Conditions, comprising these Conditions and the attached Services Order, together with any additional terms agreed in writing between the parties from time to time;
Control	shall be as defined in section 1124 of the Corporation Tax Act 2010;
Customer	the person, firm or company who purchases Services from the Supplier and whose details are set out in the Services Order;
data processor, data controller, personal data, personal data breach & processing and appropriate technical and organisational measures	have the meanings as defined in the Data Protection Legislation;
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 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 Information Commissioner or other relevant regulatory authority and applicable to a party;
Deliverables	all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees, specifically for the Customer, in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts), which are set out in the Services Order or as agreed in writing between the parties from time to time;
Document	includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;
Domestic Law	means the law of the United Kingdom or a part of the United Kingdom;
Group	the Supplier, any subsidiary or any holding company from time to time of the Supplier, and any other subsidiary from time to time of a holding company of the Supplier ("subsidiary" and "holding company" having the meaning set out Section 1159 of the Companies Act 2006) and each company in the Group is a "Group Company";
Input Material	all Documents, information and materials provided by the Customer relating to the Services including (without limitation), computer programs, data, reports and specifications;
Intellectual Property Rights	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
Minimum Period	shall have the meaning given to it in clause 3.2;
Open-Source Software	open-source software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org);
Pre-existing Materials	all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications;
Services	the services to be provided by the Supplier to the Customer under the Contract, including (where relevant) the provision of the Deliverables, as more particularly set out in the relevant Services Order;

Services Order	the written instructions from the Customer to the Supplier to purchase the Services from the Supplier, in the standard form of the Supplier incorporating these Conditions;
Supplier	the Group Company who supplies the Services to the Customer and whose details are set out in the Services Order;
Term	shall have the meaning given to it in clause 3.2;
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and
VAT	value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in these Conditions shall not affect their interpretation.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and reference to a party includes their successors and permitted assigns.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Save as expressly provided in these Conditions, a reference to writing or written includes faxes and e-mail.
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to clauses are to the clauses of these Conditions.

2. Application and Conditions

- 2.1 These Conditions shall form part of and be incorporated into the Contract and these Conditions and the Services Order shall form the entire agreement between the Customer and the Supplier and shall apply to the exclusion of any other terms and conditions contained in or referred to in any correspondence from the Customer or implied by law, trade custom, practice or course of dealing.
- 2.2 A Services Order shall prevail over any inconsistent terms or conditions contained, or referred to, in these Conditions.
- 2.3 A Services Order shall constitute an offer by the Customer to purchase the Services on these Conditions. No Contract shall come into force until a Services Order has been signed by the Supplier and the Customer or, if earlier, by the Supplier starting to provide Services under a Services Order.

3. Commencement and Duration

- 3.1 In consideration for the payment of the Charges, the Supplier shall deliver the Services set out in the Services Order.
- 3.2 The Services supplied under a Contract shall be provided from the date specified in the Services Order and, subject to earlier termination in accordance with clause 11.1, shall continue to be supplied for a period of 12 months or such other minimum period as set out in the Services Order (Minimum Period) and, after that, shall continue to be supplied unless the Contract is terminated by one of the parties giving to the other not less than three months' notice in writing (Term).
- 3.3 Following a written request from the Customer, the Supplier may, at its sole discretion, agree to temporarily suspend the Services for a maximum period of up to 60 days, following which the Services shall automatically resume, unless the Supplier agrees in writing to extend the duration of suspension.
- 3.4 Any request from the Customer to terminate and/or suspend the Contract pursuant to these Conditions shall only have effect if: (a) such request is supplied in writing; and (b) all Charges payable by the Customer to the Supplier are fully paid up to date and there are no overdue amounts owing to the Supplier at the date of such request.

4. Supplier's Obligations

- 4.1 The Supplier warrants that any Services provided under the Contract shall be provided with reasonable skill and care and using appropriate experienced personnel.
- 4.2 The Supplier does not warrant that use of the Services, or any of the Deliverables, will be uninterrupted or error-free.
- 4.3 The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and is expressly subject to the disclaimer in clause 9.2.
- 4.4 The Supplier gives no guarantee or warranty whatsoever to the Customer that the provision of the Services shall lead to any sales, revenue, profit, business, opportunity or similar for the Customer or that it shall lead to any increase in sales, revenue, profit, business, opportunity or similar for the Customer.
- 4.5 The Supplier shall have no liability for any matters outside of its direct control including, but not limited to, ensuring that a particular search engine, online directory or search site lists the Customer's website or business profile, that a particular position will be achieved for a specific keyword or that a specific position will be achieved within a certain time limit and lapses in service or changes to the search engine positions outside of the Supplier's control including, but not limited to, a change in search engine algorithms or down time on the server hosting the Supplier's domains on which the Customer's search engine marketing profiles are published, and those matters referred to in clause 12.
- 4.6 The Supplier shall be entitled, at its absolute discretion, to refuse to create a business profile for a Customer, which it considers to be unfit for publication on the internet including, but not limited to, sites containing adult oriented material, sites which promote ethnic, social or religious discord and sites which infringe any copyright or other laws or regulations.
- 4.7 Nothing in the Contract shall prevent the Supplier from being engaged, concerned or having any financial interest in any capacity in any other similar business, other business, trade, profession or occupation during the Term provided that such activity does not cause a breach of any of the Supplier's obligations under the Contract.

4.8 Any performance dates specified in the Services Order or otherwise shall be estimates only and time for performance by the Supplier shall not be of essence in the Contract.

5. Customer's Obligations

5.1 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, (including but not limited to their failure to provide data or Input Material required by the Supplier to provide the Services or failure by the Customer to hold the relevant licences or permissions to use Input Materials), the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay and the Supplier reserves the right to charge Additional Fees to the Customer as a result of any such delays or interruptions.

5.2 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services, solicit or entice away from the Supplier and/or any Group Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier and/or any Group Company in the provision of the Services. If consent is given by the Supplier in accordance with this clause then the Customer shall pay to the Supplier and/or the Group Company (as the case may be) a sum equivalent to 25% of the then current annual remuneration of the Supplier's and/or the Group Company's (as the case may be) employee.

6. Charges and Payment

6.1 All Charges shall be payable by the Customer to the Supplier in monthly instalments (as specified in the relevant Services Order) and in advance and the Customer shall pay each invoice within 30 days of the date of the relevant invoice(s) by direct debit (or such other payment method as the Supplier shall agree to from time to time in writing) to the bank account nominated by the Supplier in writing in the relevant invoice(s) or as otherwise notified to the Customer from time to time.

6.2 The Supplier may incur certain expenses in connection with the delivery of the Services including but not limited to the cost of hotels, subsistence, travel, materials and third party services. The Supplier may seek reimbursement of such expenses, materials and third party services from the Customer, which shall be agreed in advance and shall be invoiced by the Supplier to the Customer at cost.

6.3 The Charges payable by the Customer for the Minimum Period are set out in the Services Order. If the Services continue to be supplied by the Supplier for a period of not less than 90 days following the end of the Minimum Period, the Supplier reserves its right to increase the ongoing Charges in line with its most current standard day rates, which will be notified to the Customer and may be amended by the Supplier from time to time.

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.

6.5 Where the Customer wishes to query or dispute part or all of an invoice issued by the Supplier, it must do so in writing within 14 days of receipt of the invoice. The Customer hereby agrees that if it fails to so notify the Supplier within the 14 days then it must pay the invoice in full and within terms. Where only an element of an invoice is disputed, the Customer shall make payment of the remainder of the invoice as described in clause 6.1.

6.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to make any payment due to the Supplier under the Contract on the due date for payment, the Supplier may suspend all Services until payment in full has been made. The Supplier may also charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank plc. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, and shall be compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay such interest immediately on demand. Alternatively, the Supplier may, at its sole discretion, claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.7 Following the suspension of the Services pursuant to clause 3.3 or clause 6.6, when the Contract recommences, it is acknowledged by the Customer that the Term shall be automatically extended by a period equivalent to the suspension (rounded up to a month if the period of suspension is less than one month or ended part way through a month) unless the Supplier agrees in writing that the Term shall not be so extended.

6.8 All amounts due from the Customer under the Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.9 The Supplier may, at its sole discretion and without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

7. Intellectual Property Rights

7.1 Subject to clause 7.3, and unless agreed otherwise in writing prior to the commencement of the Services, the Supplier is and shall be the owner of all existing and future Intellectual Property Rights in the Deliverables, the Services and the Pre-existing Materials and all materials embodying these rights, to the fullest extent permitted by law.

7.2 Subject to clause 7.3, and upon receipt of cleared funds by the Supplier of the Charges then due and payable, the Supplier grants to the Customer a non-exclusive, irrevocable, non-transferable license to use the Intellectual Property Rights in the Deliverables and the Pre-existing Materials only to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract terminates for any reason, such licence shall automatically terminate with immediate effect.

- 7.3 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in those Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 7.4 The Supplier shall be free to use any ideas, concepts, or know-how developed or acquired by the Supplier during the provision of the Services and nothing in these Conditions shall be construed to preclude the Supplier from utilising the Pre-existing Materials for use with third parties for the benefit of the Supplier.
- 7.5 The Customer shall retain ownership of any Intellectual Property Rights that may subsist in the Input Materials. The Customer hereby grants to the Supplier a non-exclusive, irrevocable, worldwide, royalty-free licence to use the Input Materials to enable the Supplier to provide the Services and the Deliverables.
- 7.6 The Customer warrants to the Supplier that any Input Materials will not infringe the Intellectual Property Rights or any other rights of any third party.
- 7.7 To the extent that the Services and/or the Deliverables are to be provided in accordance with specific instructions from the Customer and/or any Input Materials supplied by the Customer, the Customer shall indemnify the Supplier and each Group Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier and/or any Group Company in connection with any claim made against the Supplier and/or any Group Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier following such specific instructions and/or the Supplier's and/or any Group Company's use of the Input Materials.

8. Confidentiality

- 8.1 Each party shall, both during the Term and at all times after termination or expiry of the Contract, keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it (Recipient) by the other party (Disclosing Party), its employees, agents, consultants or subcontractors and any other confidential information concerning the Disclosing Party's business or its products which the Recipient may obtain. This clause shall not apply to any information which is or becomes generally available to the public other than as a result of its disclosure by or on behalf of the Recipient in breach of these Conditions or which was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party or which the parties agree in writing is not confidential or may be disclosed.
- 8.2 The Recipient may disclose such information to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out its obligations under the Contract and as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Recipient shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 8.
- 8.4 The Recipient shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Disclosing Party to the Recipient (including, in the case of the Supplier, its Pre-existing Materials) shall, at all times, be and remain the exclusive property of the Disclosing Party, but shall be held by the Recipient in safe custody at its own risk and maintained and kept in good condition (where relevant) by the Recipient until returned to the Disclosing Party, and shall not be disposed of or used other than in accordance with the Disclosing Party's written instructions or authorisation.
- 8.6 Unless the Customer withdraws its consent in writing by notice to the Supplier, by entering into the Contract the Customer gives the Supplier permission to use the Customer's name and logo on its website and for marketing and promotional purposes.

9. Limitation of Liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 This clause 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer under the Contract, including (but not limited to) in respect of any breach of the Contract, any use made by the Customer of any Services, the Deliverables or any part of them and any representation, statement or tortious act or omission (including negligence and breach of statutory duty) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Supplier for death or personal injury resulting from negligence nor for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier, nor for any breach of section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 9.4 Subject to clause 9.2 and clause 9.3 the Supplier shall not be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use or corruption of software, data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses. The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the value of the Charges paid by the Customer for Services under the relevant Services Order for the period of 12 months immediately prior to the time at which the liability arises.

- 9.5 All references to the "Supplier" in this clause 9 shall, for the purposes of this clause 9 and clause 19, be treated as including any Group Company and all employees, subcontractors and suppliers of any Group Company, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 19.

10. Data Protection

- 10.1 The parties acknowledge that the Supplier will also hold certain information about the Customer in its capacity as a data controller. The way in which the Supplier uses this information in its capacity as a data controller is detailed in the Supplier's Privacy Policy, which is available on the Supplier's website (www.mediaworks.co.uk/privacy-policy/). The Customer acknowledges that the details of the Customer's name, address and payment record may be submitted to credit reference agencies and processed by and on behalf of the Supplier in connection with the Services. The legal basis for the disclosure of such information is that it is in the legitimate interests of the Supplier to make credit decisions about the Customer and for the purposes of fraud prevention and anti-money laundering measures.
- 10.2 The parties acknowledge where the Supplier processes personal data on behalf of the Customer in connection with the Services it does so in the capacity as a data processor, and the Customer is the data controller. The purpose of processing will be set out in the Services Order. When the Supplier is acting as a data processor, the parties agree to handle personal data in accordance with the Data Protection Legislation and the terms set out in this clause.
- 10.3 The Customer will ensure that it has all necessary consents and notices in place to enable lawful transfer of any personal data to the Supplier for the duration and purposes of the Services.
- 10.4 The Supplier shall, in relation to any personal data processed in connection with the performance of its obligations as data processor under these Conditions:
- 10.4.1 process that personal data only on the written instructions of the Customer, unless the Supplier is required otherwise by Domestic Law (where the Supplier is relying on Domestic Law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer);
 - 10.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data; and accidental loss or destruction of, 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));
 - 10.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
 - 10.4.4 not transfer any personal data outside of the UK or European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
 - 10.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments, audits and consultations with supervisory authorities or regulators;
 - 10.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
 - 10.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on completion or termination of the Services unless required by Domestic Law to store the personal data; and
 - 10.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor.
- 10.5 The Customer provides their consent for the Supplier to use sub-processors in the delivery of the Services, only where the Supplier has entered into a written agreement with such sub-processors incorporating terms which are substantially the same as those set out in this clause. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts and omissions of any sub-processor appointed by it pursuant to this clause.

11. Termination and the effects of termination

- 11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- 11.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default more than seven days after being notified in writing to make such payment; or
 - 11.1.2 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

- 11.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 11.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 11.1.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 11.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- 11.1.7 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- 11.1.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 11.1.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 11.1.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause **Error! Reference source not found.** to clause **Error! Reference source not found.** (inclusive); or
- 11.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 11.1.12 the other party commits any fraud or acts in any manner which in the reasonable opinion of the terminating party is likely to bring their image into disrepute or is materially adverse to its interests; or
- 11.1.13 the other party commits any offence under the Bribery Act 2010.
- 11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer undergoes a change of Control or disputes the ownership or the validity of the Supplier's Intellectual Property Rights.
- 11.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 11.4 Other than as set out in the Contract, neither party shall have any further obligation to the other under this Contract after its termination.
- 11.5 On termination of the Contract for any reason:
 - 11.5.1 all rights granted to the Customer under the Contract (including the right to receive the Services) shall cease;
 - 11.5.2 the Customer shall immediately pay to the Supplier any sums due to the Supplier under the Contract, including all of the Supplier's outstanding unpaid invoices and any interest due thereon; and
 - 11.5.3 in respect of Services supplied but for which no invoice has been submitted, and any Charges which would have been payable during any unexpired proportion of the Minimum Period, the Supplier may submit an invoice, which shall be payable immediately on receipt and the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11.6 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect: clause 5 (Customer's Obligations); clause 6 (Charges and Payment); clause **Error! Reference source not found.** (Intellectual Property Rights); clause **Error! Reference source not found.** (Confidentiality); clause **Error! Reference source not found.** (Limitation of Liability); clause 10 (Data Protection); this clause 11 (Termination and the effects of termination); clause 17 (Assignment); clause 20 (Notices); and clause **Error! Reference source not found.** (Governing Law and Jurisdiction).

12. Force Majeure

The obligations of a party under the Contract shall be suspended at any time whilst it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of either party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

13. Variation

- 13.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the applicable charges. If the Supplier requests a change to the scope of Services for any other reason, the Customer shall not unreasonably withhold or delay consent to such change.

13.2 Subject to clause **Error! Reference source not found.**, no variation of the Contract shall be valid unless it is confirmed in advance in writing by the Supplier.

14. Waiver

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which such waiver is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

15. Severance

15.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2 If a provision of the Contract (or part of any provision) is deemed deleted under clause 15.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. Entire Agreement

16.1 The Contract constitutes the whole agreement between the parties and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

16.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract) of any person (whether a party to the Contract or not), unless expressly provided in the Contract.

16.3 Nothing in this condition shall limit or exclude any liability for fraud.

17. Assignment

17.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract including, without limitation, to any Group Company.

17.2 The Customer shall not, without the prior written consent of the Supplier assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

17.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person

18. No Partnership or Agency

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way, save for where it is necessary for the Supplier to act as the Customer's agent in connection with the provision of the Services.

19. Rights of Third Parties

19.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract, except that any Group Company may enforce clause 5.2 and/or clause 7.7 and any Group Company (and all employees, subcontractors and suppliers of any Group Company) may enforce, and have the benefit of the exclusions and limitations of, clause 9 of these Conditions.

19.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

20. Notices

20.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party or sent by fax or by email and for the attention of the individual specified by the relevant party by notice in writing to the other party.

20.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the company, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, if sent by fax at the time of transmission and if sent by email on receipt by the email server of the recipient of the notice.

20.3 This clause **Error! Reference source not found.** shall not apply to the service of any proceedings or other documents in any legal action.

21. Governing Law and Jurisdiction

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

21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).



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