

RMSI Terms and Conditions

This Agreement is made between RMSI Limited whose registered office is at, Davidson House, Forbury Square, Reading, RG1 3EU known as “RMSI” or “the Company” and “the Client” as listed in the SOF.

Definitions

“Client Content” means the Client’s software, data, documents, audio, video or any other content placed on the system;

“Company” RMSI Limited, UK;

“Confidential Information” of a party (the “Disclosing Party”) means all information of the Disclosing Party, which has value by virtue of not being publicly known and which is disclosed or otherwise made available to the other (the “Receiving Party”) under this Agreement;

“Fee(s)” means the fee(s) set out in the SOF;

“Force Majeure Event” means any event beyond the reasonable control of the affected party, which cannot by the exercise of reasonable diligence be prevented or be caused to be prevented, despite the adoption of reasonable precaution and/or alternative measures and which materially and adversely affect such party’s performance of its duties or obligations or enjoyment of its rights under this Agreement and shall include without limitation: (a) acts of God including but not limited to fire, drought, flood, earthquake, epidemics, pandemic including but not limited to Covid-19 and other natural disasters; (b) explosions, accidents (which are not attributable to negligence on the part of either party), air crashes and shipwrecks; (c) economic blockades, embargoes and sabotage; (d) strikes, work to rules or similar labour difficulties not attributable to any unfair policies of any party; (e) change in the policies of the Government, which makes the execution of this Agreement impossible; and/or (f) the promulgation of or restrictions placed by onerous applicable laws, provided however, that insufficiency of funds shall not constitute an event of force majeure;

“Initial Term” means the minimum term for which RMSI will provide the Services as set out in the SOF;

“One Time Installation Fee” means any initial installation charge as set out on the SOF or as otherwise agreed in writing between the Parties;

“Open Source Software” means any software licensed under any form of open-source license meeting the Open Source Initiative’s Open Source Definition (<https://opensource.org/osd-annotated>) or any libraries or code licensed from time to time under the General Public License(as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or substantially similar licences;

“Service Order Form” or “SOF” means the order form document which lists the Services Client has chosen and the related fees and together with these Terms and the framework conditions referred to in the SOF forms a written contract between the Parties;

“Services” means the services to be provided by us as set out in the SOF;

“Third Party Software” means software which is not owned by RMSI or the Client (but excluding Open Source Software)

In this Agreement, unless the context otherwise requires, words suggesting the singular include the plural and vice versa and words suggesting the masculine include the feminine and vice versa. Headings are used for ease of reference only and do not affect the interpretation of this Agreement.

1. The Agreement

1.1 This means the agreement made by the Parties which comprises the SOF, the framework conditions referred to therein, the Call Off Contract and these terms and conditions collectively the **“Agreement”** and which shall be interpreted in the order of precedence as stated in the framework conditions in the event of any inconsistency or conflict (and subject to clause 7.2 in below in respect of Third Party Software), namely in the following order of precedence:

- 1.1.1 The framework conditions;
- 1.1.2 The SOF;
- 1.1.3 The Call Off Contract;
- 1.1.4 These terms and conditions
- 1.2 The Agreement shall be deemed to have been accepted by the Client upon the first of (i) the Client's signature of the SOF, (ii) the Client's instruction to commence work, (iii) RMSI starting work or (iv) the Client's payment of any agreed fee.
- 1.3 Variations or additions to the Agreement can be made. However, authorized representatives of both Parties must agree to the variations or additions beforehand in writing.

2. Provision of Services

- 2.1 RMSI warrants that it will perform the Services described in the SOF with reasonable skill and care and in a good and workmanlike manner. The standard by which the performance of the Services will be measured is the professional standard expected of an experienced provider of consultancy services.
- 2.2 RMSI will use consultants with appropriate skills and experience for the provision of the Services. RMSI may replace those consultants provided that the replacement consultants are consultants of appropriate experience and suitability.
- 2.3 RMSI agrees to deliver the Services within a reasonable time. Both Parties will use all reasonable endeavours to meet any target date, project plan or time table referred to in the Agreement.

3. Fees and Payment

- 3.1 The SOF sets out the fees, costs and expenses for the Services. Fees for consultancy based on time and materials or on an estimate do not constitute a fixed price. Fees which are considered to be subject to a Fixed Price shall be explicitly stated to be such in the SOF.
- 3.2 All fees, costs and expenses referred to in the SOF are exclusive of VAT, sales and similar taxes of any kind.
- 3.3 The Client shall pay all fees, costs and expenses related to the Services upon RMSI presenting its RMSI' invoice in accordance with the agreed payment profile.
 - 3.3.1 In the event that invoices are not paid within 30 days from presentation of the invoice, RMSI will be entitled to suspend performance of the Services and/or to charge interest on any outstanding amount, as prescribed under the SOF.

4. Confidentiality

- 4.1 In this section "Confidential Information" means any information (in whatever form) which is of a confidential nature and which relates to a Party's business or that of its group companies (for the purposes of this Agreement, a group company is a company controlling, controlled by or under common control with a Party to this Agreement), the provision of the Services or the Agreement and which is disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or which the Receiving Party learns during the provision of the Services or otherwise as a result of entry into this Agreement.
- 4.2 The definition of Confidential Information does not include any information:
 - 4.2.1 which is already known by the Receiving Party without an obligation of confidence; or
 - 4.2.2 which is or comes into the public domain without breach of this Agreement; or
 - 4.2.3 which is independently developed or created by the Receiving Party without use of the Confidential Information supplied; or
 - 4.2.4 Lawfully received from a third Party without obligation of confidence.

- 4.3 The Receiving Party will treat the Disclosing Party's Confidential Information with the same degree of care as it treats its own confidential information and, as a minimum, with reasonable care.
- 4.4 During the provision of the Services and for three (3) years from completion thereof or other termination of this Agreement, the Receiving Party agrees that it will keep the Disclosing Party's Confidential Information confidential and subject to clause 4.5 below not disclose such Confidential Information to any third Party.
- 4.5 The prohibition referred to in clause 4.4 above will not apply where disclosure of the Confidential Information is:
- 4.5.1 Reasonably required by a company within the same group;
 - 4.5.2 Reasonably required by the Parties' advisors or sub-contractors;
 - 4.5.3 Provided that any disclosure as a result of the exceptions in clauses 4.5.1 and 4.5.2 above and 4.5.4 below will only be made if such third party is under no less onerous obligations of confidentiality than as set out in this Agreement.
 - 4.5.4 Reasonably required if as part of the provision of the Services the Client requires RMSI to work with any third party supplier or other group company of the Client;
 - 4.5.5 Required by a court or by law or by a regulatory authority. The Receiving Party shall give as much notice to the Disclosing Party as is reasonably practicable in the circumstances, and the Receiving Party shall assist the Disclosing Party in limiting the extent of such disclosure; or
 - 4.5.6 Consented to in writing by the other Party.

5. Client's Obligations

- 5.1 RMSI may need access to the Client's facilities, information and resources for and during the provision of the Services. The Client, without charge to RMSI, will provide access to these to the extent reasonably requested by RMSI and shall co-operate with RMSI to the extent reasonably required to achieve the objectives set out in the Agreement.

6. Intellectual Property and Rights of Use

- 6.1 Intellectual Property ("IP") means all forms of intellectual property, including, without limitation, property in and rights under copyright, patents, conceptual solutions, circuit layout rights, performance rights, design rights, designs, database rights, trade names, trademarks, service marks, methodologies, ideas, processes, methods, tools and know-how and entitlement to make application for formal (or otherwise enhanced) rights of any such nature.
- 6.2 IP and rights to IP owned by either Party on the date of the Agreement or created outside the terms of this Agreement and all modifications thereto and derivative versions thereof created during the Services ("**Background IP**") shall remain the property of that Party.
- 6.3 The Client hereby grants to RMSI a royalty-free, non-exclusive, non-transferable license to use the Client's Background IP as required to allow RMSI to perform its obligations under the Agreement.
- 6.4 IP created or developed by RMSI within the provision of the Services ("**Foreground IP**") and rights to such IP will be owned by RMSI.
- 6.5 Effective upon receipt of payment in full by RMSI, RMSI hereby grants to the Client a royalty-free, non-exclusive, non-transferable license to use any Foreground IP and RMSI's Background IP (in object code only where this is software) as necessary to allow the Client to use the Services and deliverables produced by RMSI for the objectives set out in the Agreement. For the avoidance of doubt, no title, ownership or other proprietary rights in the Foreground IP or RMSI's Background IP are transferred to the Client, and all rights not expressly granted are reserved by RMSI.
- 6.6 Without prejudice to any other rights or remedies available to RMSI under this Agreement or at law, the license referred to in clause 6.5 shall automatically and immediately terminate upon any breach by the

Client of the scope, purpose or restrictions of such licence, including any use, reproduction, modification, distribution or exploitation of the Foreground IP or RMSI's Background IP if the Client uses or seeks to use the Foreground IP and RMSI's Background IP for purposes other than those described in clause 6.5. Upon termination or expiry of this Agreement or the licence, the Client shall promptly cease all use of the Foreground IP and RMSI's Background IP and, at RMSI's option, return or permanently destroy all copies thereof.

- 6.7 RMSI warrants that to the best of RMSI's knowledge and belief the results of the Services shall not infringe the copyright of any third party.

7. Third Party Services/Software

- 7.1 At Client's request and subject to the Client entering into Third Party Software owner's standard license terms, RMSI may provide Third Party Software and/or services and may also provide product support for them if detailed specifically as a requirement, on the licensing terms for such open source and third party software.
- 7.2 If the parties agree that the Client will use Third Party Software as part of the Services, Client agrees to comply with the Third Party Software License Terms as defined in SOF for Third Party Software or as notified to the Client and agrees that Client may not resell the Services. Client agrees that Third Party Software license terms shall take precedence over any other conflicting terms of this Agreement.
- 7.3 Client agrees that the use of Third Party Software or products is at Client's sole risk and RMSI is not responsible in any way for their performance, features or failures and makes no warranty in this regard.
- 7.4 The Client's rights to use the Third Party Software are subject to the usage rights granted by Third Party Software owner. The Client acknowledges that the usage rights of Third Party Software owner may vary from product to product and agrees to abide by such rights. The Client is deemed to accept the usage rights in relation to the Third Party Software set out in the SOF or as notified to it, by placing the SOF order with the Company or by the Company commencing the Services, whichever is the sooner. Clause 7.4 does not apply in respect of Open Source Software used as part of the Services.
- 7.5 The Client agrees that any software provided by the Company or Third Party Software owner will remain the property of the Company and/or Third Party Software owner respectively and cannot be taken, transferred or re-assigned. Clause 7.5 does not apply in respect of Open Source Software used as part of the Services.

8. Open Source Software

The Client agrees that the Company may use Open Source Software where appropriate. Where any Open Source Software is provided as part of the Services the Company will take all reasonable steps to notify and agree with the Client the use of Open Source Software. Such Open Source Software will be licensed in accordance with the original creator terms.

9. Termination

- 9.1 Either Party may at any time and without cause terminate the Agreement on giving 30 days written notice of termination to the other Party.
- 9.2 Upon termination under clause 9.1, the Client shall pay RMSI all sums due in respect of the Services provided and expenses incurred prior to termination including third party costs which were necessarily and unavoidably incurred by RMSI.
- 9.3 Either Party may terminate the Agreement forthwith by written notice if the other Party commits an act of bankruptcy or goes into liquidation or is put into liquidation (other than for a proper commercial purpose and whilst solvent) or a receiver is appointed or an administration order is made in respect of it.
- 9.4 Either Party may terminate the Agreement forthwith by written notice if the other Party commits a material breach of the Agreement and, provided that where such breach is capable of remedy the Party in default, has failed to remedy the breach within 30 days of receipt of a written notice from the other Party identifying that the breach has occurred.

- 9.5 Involvement by either Party in unethical business practices shall always be considered a material breach which is not capable of remedy. Such practice includes, but is not limited to, either Party or anyone acting on a Party's behalf (with or without the knowledge of that Party):
- 9.5.1 Engaging in any unethical or illegal activities in connection with the project or any agreement related to the project;
 - 9.5.2 Offering or giving any bribes or gifts to any individual or organization involved in any way with the project;
 - 9.5.3 Requesting or accepting any bribes or gifts from any individual or organization involved in any way with the project;
 - 9.5.4 Offering or paying any commission or other payment to any individual or organization involved in any way with the project unless the full circumstances of such commission or payment are declared in writing to the other Party and, where applicable, any end-client in advance; or
 - 9.5.5 Accepting any commission or other payment from any individual or organization involved in any way with the project unless the full circumstances of such commission or payment are declared in writing to the other Party and, where applicable, any end-client in advance.
 - 9.5.6 A breach of the Third Party Software owners AUP;
- 9.6 Termination shall not affect any accrued rights or liabilities arising out of the Agreement.
- 9.7 Termination shall not affect the Client's license rights to use the Third Party Software Owners products unless such termination is as a result of the Client's breach of Third Party Software Owner's license terms (which shall be a material breach for the purposes of clause 9.4).

10. Limitations and Exclusions

- 10.1 Neither party excludes liability for death or personal injury to any person due to its negligence or the negligence of its employees or any other liability which cannot be lawfully excluded or limited.
- 10.2 RMSI's total aggregate 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 any agreement under this Agreement shall be limited to a sum equal to the greater of (i) £ 10,000; or (ii) 100 % of the Fees paid during the 12 month immediately preceding the date on which the claim arose.
- 10.3 Neither Party shall in any circumstances be liable to the other whether in contract, tort (including negligence) or otherwise for:
- 10.3.1 Any loss of profit, loss of contracts, loss of benefit, loss of production, loss of availability, loss of data, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the other Party.
 - 10.3.2 Any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature.
 - 10.3.3 Any punitive or exemplary damages.
- 10.4 Nothing in this Clause 10 shall affect or limit the Client's obligation to pay sums properly due under the Agreement.
- 10.5 The express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 10.6 Nothing in this Agreement shall limit a Party's liability for fraud or fraudulent misrepresentation.

11. Non-Solicitation and the Transfer of Undertakings and (Protection of Employment) Regulations 2006 (SI 2006/246) ("TUPE")

- 11.1 The Client shall not, either during the provision of the Services or for a period of six months from completion of the Services, employ or offer employment to any member of RMSI' project team.
- 11.2 The Client agrees that if TUPE applies on the start date of the provision of the Services, it will use its reasonable endeavours to obtain, and shall disclose to the Service Provider any such information as it does so obtain, details of the identity, terms of employment (including pension arrangements) and all other relevant details of transferring employees.
- 11.3 The Client shall indemnify RMSI (or shall procure that the legacy provider of Services shall indemnify RMSI) from and against all losses, costs, awards, liabilities and expenses (including reasonable legal fees) incurred by RMSI in connection with or as a result of any claim by any employee or former employee of the Client or the legacy provider that is being transferred in respect of such person's employment with the Client or the legacy provider, during the period up to and including the Services commencement date.

12. Third Party Rights

- 12.1 No person or entity other than the Client shall have any rights to enforce any of the terms of the Agreement against RMSI under the Contracts (Rights of Third Parties) Act 1999.
- 12.2 RMSI does not accept any liability, howsoever arising, under the Agreement to any person or entity other than the Client, to the extent permitted by law.

13. Assignment

The Client shall not assign the Agreement without RMSI's prior written consent (not to be unreasonably withheld or delayed).

14. Data Protection

- 14.1 Each Party warrants to the other that it has shall comply with their respective obligations under data protection laws including the General Data Protection Regulation 2016 (GDPR) and shall not do anything or permit anything to be done which would result in a breach of data protection laws in respect of personal data, as defined by the GDPR ("Personal Data").

In particular (but without limitation):

- 14.1.1 RMSI will process the Personal Data belonging to or under the control of the Client only for the purposes of the Agreement and in accordance with the Client's written instructions (and the Client will ensure that such instructions shall comply with the GDPR) which shall state the subject matter, duration and nature of the processing, the type of Personal Data being processed and the categories of data subject;
- 14.1.2 RMSI will ensure that those employees, agents or representatives processing the Client's Personal Data will be bound by a duty of confidentiality where processing the Client's Personal Data;
- 14.1.3 RMSI shall maintain complete and accurate records and implement appropriate technical and organizational measures to ensure a level of security in respect of the Personal Data as is appropriate under the GDPR, and which shall be agreed with the Client;
- 14.1.4 RMSI will only engage sub-processors with the prior written consent of the Client and will flow down these terms to any sub-processors;
- 14.1.5 RMSI will provide reasonable assistance to the Client where the Client is obliged to provide subject access requests and in allowing data subjects to exercise their rights under the GDPR. RMSI shall provide reasonable assistance where required by the Client in meeting its GDPR obligations in respect of data protection impact assessments. In either case the Client shall pay a reasonable charge on a time basis in respect of such assistance to RMSI;

- 14.1.6 In respect of any Personal Data breach caused by RMSI, RMSI shall notify the Client of the Personal Data breach without delay and provide reasonable and proportionate assistance to the Client regarding its data breach notification obligations;
- 14.1.7 Upon request RMSI will return all the Personal Data to the Client save in relation to routine backups. RMSI shall take all reasonable steps to keep routine backups secure;
- 14.1.8 RMSI shall submit to reasonable audits and inspections on 14 days' notice in order for the Client to verify RMSI's compliance with its obligations under the GDPR;
- 14.1.9 RMSI will not transfer Personal Data outside the EU or to any third party unless the prior written consent of the Client has been obtained.
- 14.1.10 RMSI will notify the Client immediately if it receives any communication relating to either party's obligations under the GDPR or data protection laws.
- 14.1.11 The Client shall be the Controller and RMSI the Processor of the Personal Data.
- 14.1.12 RMSI shall not be liable for any indirect or consequential losses caused to the Client by its breach of this clause 14 (including damage to goodwill or loss of reputation).
- 14.1.13 Each Party warrants to the other that it has complied with and will continue to comply with the provisions of the Data Protection Act 1998 and the General Data Protection Regulation 2016 (GDPR) when in effect, in relation to the Agreement.

15. Waiver

- 15.1 No failure, delay or indulgence by either Party in exercising any power or right under the Agreement shall operate as a waiver of that power or right.

16. Notices

- 16.1 Where the Client is required to give notice in writing to RMSI, the notice must be addressed to the individual who signed the Agreement on behalf of RMSI at the address set out in the Agreement.
- 16.2 Where RMSI is required to give notice in writing to the Client, the notice will be addressed to the person who signed the Agreement (or that person's successor) at the address stated in the Agreement (or current place of business if RMSI knows this to be different).
- 16.3 All notices in writing must be sent by post or delivered by hand to the addressee.
- 16.4 In the absence of evidence of earlier delivery:
 - 16.4.1 A notice sent by post will be deemed to have been served two business days after posting.
 - 16.4.2 A notice delivered by hand will be deemed received on delivery.

17. Force Majeure

- 17.1 If a Force Majeure Event arises and either Party is unable to perform in whole or in part its obligations as set forth in this Agreement, then such Party will give the other Party prompt written notice of such cause thereof within 30 (thirty) days of occurrence of such Force Majeure Event, and will be relieved of those obligations to the extent such Party is unable to perform for as long as such cause continues or for 30 (thirty) days, whichever is shorter. If the performance in whole or in part or any obligation under this Agreement is prevented or delayed by any reason of Force Majeure for a period exceeding 30 (thirty) days, either Party may at its option, terminate the Agreement without any financial repercussion on either side. Neither Party will be liable for any loss, injury, delay, or damages suffered or incurred by the other Party due to the above causes or to the termination of the Agreement pursuant to this Clause.

18. Publicity

- 18.1 Neither Party shall make any statement about the services to the press or the public without the other Party's written consent.

19. Severability

- 19.1 If any provision or part of a provision of the Agreement is held to be invalid, illegal or unenforceable that part shall be severed and the remaining provisions shall continue to be valid and enforceable as if the Agreement had been executed with the invalid provision omitted.

20. Hosted Services on the Cloud

- 20.1 Where hosting services are provided as part of the SOF "Hosted Services" the Client shall be solely responsible for its data and of the means by which the Client acquires and protects data. Client agrees that the "Hosted Services" are used for its own internal use only and shall not transfer or assign or lease their use in any way nor use them commercially to provide products to any End-Users. Client shall use reasonable endeavours to prevent unauthorized access to or use of the Hosted Services. Hosted Services may be subject to limitations made by RMSI. Any such limitations will be specified in the applicable user documentation or on the web site.
- 20.2 Client agrees that its use of any third party hosting provider will be on the terms and conditions of use granted by the Third Party Hosting provider. The Client is deemed to accept these terms and conditions of use in relation to the hosting services set out in the SOF by placing the order with RMSI or by RMSI commencing the Services, whichever is the sooner.
- 20.3 Client shall be responsible for security, protection and back up of all of its Clients Content.

21. Entire Agreement

- 21.1 This Agreement constitutes the entire and only agreement in relation to the services and deliverables and supersedes all prior agreements, representations, understandings or discussions. The Client acknowledges that any agreement, representation, understanding or discussion it wishes to rely upon has been recorded in the Agreement. The Client acknowledges that no reliance has been placed upon any agreement, representation, understanding or discussion that has not been embodied in this Agreement.

22. Applicable Law & Jurisdiction

- 22.1 The Agreement shall be governed by and construed in accordance with the laws of England.
- 22.2 Any dispute arising out of or in connection with the Agreement will be subject to the exclusive jurisdiction of the English Courts.