

## Terms & Conditions

Supplier has agreed to provide the Customer with the Software and / or the Services and Deliverables as set out in the relevant Order Form and / or Project Plan upon the terms and conditions set out below (including any applicable Schedule(s) attached to these terms and conditions). Any reference to the terms and conditions will be deemed to include the applicable Schedule(s).

These terms and conditions, together with the relevant Order Form and / or Project Plan, will govern the Customer's use of the Software and / or receipt of the Services and Deliverables as set out in the relevant Order Form and / or Project Plan and will apply to the exclusion of all other terms and conditions, including any terms and conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document (whether or not such document is referred to in the Order Form and/or Project Plan) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

No variation to these terms and conditions shall be effective unless signed in writing by a duly authorized representative of both Supplier and the Customer.

### **1. Definitions and Interpretation**

1. In these terms and conditions unless the context otherwise requires:

**"Acceptance Tests"** means the tests to be carried out by the Supplier in respect of each Deliverable to be provided by Supplier, as may be more particularly described in an Order Form and / or Project Plan;

**"Additional Charges"** means the charges at Supplier's rates from time to time for work undertaken on a time and materials basis;

**"Additional Services"** means any additional services as Supplier and Customer may agree to be provided from time to time in writing;

**"App"** means the mobile application developed by Supplier and provided to the Customer in order to access the Software;

**"Authorised Users"** means: (i) those employees and independent contractors of the Customer who are authorised to use the Software in accordance with these terms and conditions; and / or (ii) an authorized third party who is authorized to use the Pricing Software pursuant to **clause 1.4 of Schedule 1** of these terms and conditions;

**"Background IP"** means any and all Intellectual Property Rights in existence as at the commencement date of the relevant Contract, or created after the commencement date of the relevant Contract independently of the relevant Contract;

**"Business Days"** means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales;

**"Cloud Site"** means the Website and / or the App made available to the Customer by Supplier through which the Customer may access and use the Cloud Software;

**"Cloud Software"** means the Software licensed to the Customer that is delivered and managed remotely by Supplier as part of a hosted environment;

**"Confidential Information"** means any information (whether written, oral, in electronic form or in any other media) that is disclosed in connection with these terms and conditions and/or any Order Form by or on behalf of a party (the **"Discloser"**) to the other party (the **"Recipient"**) whether before, on or after the date of the relevant Order Form and that relates (in whole or in part): i) to the Discloser or its business; and/or ii) to the terms of or subject matter of these terms and conditions or any Order Form;

**"Contract"** has the meaning given to it in **clause 2.1** of these terms and conditions;

**"Customer"** means the company or other organisation identified in the relevant Order Form and / or Project Plan;

**"Customer Data"** means: (i) any information, data, documents or other content inputted or uploaded into the Database and/or the Software by the Customer; and (ii) any information, data, documents or other content inputted or uploaded onto the Customer Website hosted by Supplier as part of the Website Hosting Services.

**"Customer Materials"** means any information, data, documents, drawings, designs or other materials or content provided by or on behalf of the Customer to Supplier in connection with the Services;

**“Customer Website”** means the website of the Customer which is the subject of the Services provided by Supplier;

**“Database”** means the database of information contained in the Pricing Software and as the same may be amended by Supplier from time to time;

**“Data Protection Laws”** any laws in force in the United Kingdom from time to time that relate to data protection, the processing of Personal Data and privacy;

**“Deliverable(s)”** means the deliverables to be provided by Supplier to the Customer in accordance with the relevant Order Form and / or Project Plan;

**“Design Concept”** means a draft of suggested website designs, whether in storyboard, graphic, report or electronic format designed or created by Supplier;

**“Designated Equipment”** means the equipment of the Customer upon which the On-Premise Software is to be Installed by Supplier from time to time;

**“Documentation”** means the instruction manuals, user guides and other information identified in the Order Form to be made available from time to time by Supplier at its discretion in either printed or electronic format for the Customer and as the same may be updated from time to time by Supplier at its discretion;

**“Event”** an act, event, omission or circumstance;

**“Fees”** means the fees to be paid by the Customer to Supplier for the Software (including the Documentation), the Services and any Hardware as set out in the relevant Order Form and / or Project Plan and as the same may be varied by Supplier from time to time;

**“Hardware”** means any hardware ordered by and sold or supplied to the Customer by Supplier as identified in the relevant Order Form;

**“Inappropriate Content”** means any material which is unlawful, illegal, obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights;

**“Intellectual Property Rights”** means all intellectual property rights, including patents, utility models, rights to inventions, copyright and neighboring and related rights, trade marks and service marks, business names and domain names, rights in get up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Insolvent”** means a party:

- i) takes or any other person takes any step or action in connection with the appointment of an administrator in respect of it;
- ii) gives notice under section 84 of the Insolvency Act 1986 of or purposes or passes a resolution for its winding up (save for the purpose of a solvent restructuring);
- iii) has a winding up petition based upon a petition debt with a value of at least £10,000 presented against it;
- iv) is subject to a notice of intention to appoint an administrator;
- v) has a receiver, administrator or provisional liquidator appointed;
- vi) has a winding up order made by a court in respect of it;
- vii) proposes, makes or is subject to a company voluntary arrangement, a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement (unless in that last case that scheme has been previously approved by the other party in writing);
- viii) ceases to trade;
- ix) is unable to pay its debts as and when they fall due; or
- x) is subject to any analogous procedure or process in any other jurisdiction.

**“Installation”** means the installation of the On-Premise Software by Supplier onto the Customer’s Designated Equipment;

**“Liability”** liability arising out of or in connection with these terms and conditions and / or a Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or failure to perform or defect or delay in performance of, any of a party’s obligations under these

terms and conditions and / or any Contract and including any failure, defect or error in the Services, the Deliverables, the Software, the Documentation and/or the Database, in each case howsoever caused including if caused by negligence;

“**Marketing Services**” means the marketing services provided in accordance with **Schedule 3** and as may be further described in an Order Form and / or Project Plan;

“**Modules**” means the “off-the-shelf” software modules which Supplier may licence to the Customer in accordance with **Schedule 2** and as may be further described in an Order Form and / or Project Plan;

“**On-Premise Software**” means the object code form of the Software licensed to the Customer for Installation on the Customer’s Designated Equipment;

“**Order Form**” means the order form and/or Project Plan and/or quotation document(s) setting out the Customer’s requirements for Software and / or Services and Deliverables agreed between Supplier and the Customer in writing which incorporates these terms and conditions;

“**Personal Data**” means personal data as described in the Data Protection Laws;

“**Pricing Software**” means either the On-Premise Software or the Cloud Software (as applicable) licensed by Supplier to the Customer through which the Database is accessed in accordance with **Schedule 1** and as may be further described in an Order Form and / or Project Plan;

“**Project**” means the relevant project as set out in a Project Plan;

“**Project Plan**” means a project plan setting out the Customer’s specific requirements for Software and / or Services and Deliverables as agreed between Supplier and the Customer in writing which incorporates these terms and conditions;

“**Services**” means, as applicable: (i) the Marketing Services; (ii) the Website Design and Development Services; (iii) the Website Hosting Services; (iv) the Support and Maintenance Services; (v) the Training Services; and/or (vi) the Additional Services, each as may be more particularly described in an Order Form and / or Project Plan;

“**Software**” means: (i) the Pricing Software; (ii) the Website Software; and (iii) the Modules, together with any Updates agreed in writing to be provided by Supplier to the Customer from time to time as part of the Support and Maintenance Services;

“**Subscription Period**” means the fixed period of time applicable to a subscription licence set forth in the relevant Order Form and / or Project Plan for which the Customer is licensed to use and access the Cloud Software;

“**Supplier**” means the entity identified in the Order Form and / or Project Plan responsible for providing the Services and Deliverables and / or licensing the Software to the Customer in accordance with these terms and conditions;

“**Support and Maintenance Services**” means the support and maintenance services provided in accordance with **Schedule 6** and as may be further described in an Order Form and / or Project Plan;

“**Support Term**” means the period set out in the Order Form and / or Project Plan for which the Support and Maintenance Services will be provided by Supplier;

“**Third Party Products**” means any third party products which the Customer may order as set out in an Order Form and / or Project Plan;

“**Training Services**” means the training services to be provided by Supplier as set out in the relevant Order Form and / or Project Plan or otherwise agreed in writing from time to time between the Customer and Supplier;

“**Updates**” means patches, additions, modifications, and new versions of the Software incorporating such patches, additions and modifications that are provided to the Customer by Supplier as part of the Support and Maintenance Services and are not included in the initial delivery of the Software. Updates do not include additions or modifications that Supplier considers to be a separate product or for which Supplier charges its customers extra or separately;

“**Virus**” means a program code, programming instruction or set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, or other code typically designated as a virus, including but not limited to Trojans, worms and logic bombs;

“**Website**” means the website belonging to the Supplier used by the Customer to access and use the Cloud Software;

“**Website Design and Development Services**” means the website design and development services provided in accordance with **Schedule 4** and as may be further described in an Order Form and / or Project Plan;

“**Website Hosting Services**” means the website hosting services provided in accordance with **Schedule 5** and as may be further described in an Order Form and / or Project Plan; and

“**Website Software**” means any source code written, created or developed by Supplier as part of the Website Design and Development Services and licenced to Customer (in object code form and either as On-Premise Software or Cloud Software) in accordance with these terms and conditions.

## 2. Interpretation:

- 2.1. References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as reference to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- 2.2. any words following the words “include”, “including”, “in particular” or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 2.3. unless the context otherwise requires, references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental agency or department, state or agency of state or any entity (in each case whether or not having separate legal personality);
- 2.4. Headings to clauses in these terms and conditions are for the purpose of information and identification only and shall not be construed as forming part of the terms and conditions.

## 2. Ordering

- 2.1. Order Forms. Each Order Form and / or Project Plan is an offer by the Customer to purchase a licence to use the Software and / or to purchase Services and Deliverables from Supplier pursuant to these terms and conditions. A contract (“**Contract**”) for the supply of Software and / or Services and Deliverables is formed when Supplier accepts the Order Form and/or the Project Plan, as appropriate. Supplier may accept or reject any Order Form and / or Project Plan at its sole discretion.
- 2.2. Project Plans. The Customer shall provide Supplier with a request for a Project Plan, accompanied by a written brief setting out the requirements and specifications of the Services which are requested from Supplier, including a description of what work is to be done, any dates by which it or each stage of the work is requested to be started and finished, any Deliverables which the Customer expects Supplier to provide as part of the Services, any Customer Materials which the Customer will provide and such other information as Supplier may request to allow preparation of a formal draft Project Plan which shall be required to be signed as accepted by both parties. No Project will be commenced without the agreement and signature of both parties to the Project Plan.
- 2.3. No cancellation. The Customer shall not be entitled to cancel a Contract after it has been accepted by Supplier unless Supplier provides its prior written consent to such cancellation.
- 2.4. Cancellation Payment. Where there is an agreed cancellation of a Contract, the Customer shall pay to Supplier a cancellation fee equal to the higher of:
  - 2.4.1. a sum representing the value of the work carried out by Supplier up to and including the cancellation date of the relevant Contract; or
  - 2.4.2. 60% of the Fees quoted in the relevant Contract.

## 3. Software, Services and Deliverables

- 3.1. Applicable Terms. Supplier will provide the Software, Services and Deliverables to the Customer in accordance with these terms and conditions (including the terms of the applicable Schedule attached to these terms and conditions) and any other terms and conditions of the relevant Contract.
- 3.2. Applicable Schedules. Where:
  - 3.2.1. the Pricing Software is being provided, **Schedule 1** of these terms and conditions will apply;
  - 3.2.2. the Modules are being provided, **Schedule 2** of these terms and conditions will apply;
  - 3.2.3. the Marketing Services are being provided, **Schedule 3** of these terms and conditions will apply;
  - 3.2.4. the Website Design and Development Services are being provided, **Schedule 4** of these terms and conditions will apply;
  - 3.2.5. the Website Hosting Services are being provided, **Schedule 5** of these terms and conditions will apply; and
  - 3.2.6. the Support and Maintenance Services are being provided, **Schedule 6** will apply, in addition to these terms and conditions.
- 3.3. Support and Maintenance subscriptions. All Software is licensed by Supplier on the basis that the Customer maintains a subscription for Support and Maintenance Services in relation to the Software licensed.

Customers who have not purchased a Support and Maintenance Services subscription will not receive any Updates in relation to the Software licensed.

- 3.4. Re-installation. Customers who have not purchased a subscription to Support and Maintenance Services for a period of three years or more shall be deemed to have had fair use of the licensed Software and, if the Customer subsequently purchases a Support and Maintenance Services subscription for the Software after the three year period, the Customer will be required to pay a re-installation fee equivalent to the purchase price of the updated Software at the time of purchase of the new Support and Maintenance Services subscription.
  - 3.5. Training Services. If requested by the Customer, Supplier shall provide the Training Services in relation to the Software. Any Training Services to be provided, together with any associated Additional Charges, must be agreed in writing before being provided by Supplier.
  - 3.6. Additional Services. If requested by the Customer, Supplier shall provide Additional Services that may be required by the Customer in relation to the Software. Any Additional Services to be provided, together with any associated Additional Charges, must be agreed in writing before being provided by Supplier.
  - 3.7. Review of the Services. The representatives of Supplier and the Customer shall make contact at pre-arranged intervals (or at such other intervals as Supplier shall request) to discuss matters relating to the Services. If either party wishes to increase the scope or nature of the Services, it shall submit details of the requested change to the other in writing.
  - 3.8. Increase in scope. If either party requests an increase to the scope or nature of the Services, Supplier shall, within a reasonable time, provide a written estimate to the Customer advising the following:
    - 3.8.1. the likely time required to implement the change;
    - 3.8.2. any variations to the Fees arising from the change;
    - 3.8.3. the likely effect of the change on the Order Form and / or Project Plan; and
    - 3.8.4. any other impact of the change on the terms of the Contract.
  - 3.9. Mandatory changes. 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 Fees for the Services. If Supplier request a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to such changes.
  - 3.10. Amendment to the terms. If the Customer wishes Supplier to proceed with any increase in scope, Supplier shall be under no obligation to do so unless and until both parties have agreed in writing the necessary variations to Supplier's Fees, the Order Form / and or Project Plan and any other relevant terms of the Contract to take account of the required change.
  - 3.11. Lifespan of Products. Supplier shall be entitled to determine the life span of any of the products and services that it offers to customers at its sole discretion. Where Supplier intends to discontinue any product or service, it shall notify the Customer in writing in advance of any discontinuation of the relevant product or service.
- 4. Fees, Payment and Invoicing**
- 4.1. Fees. In consideration of the provision of the Services and Deliverables and / or the supply of the Software, the Customer agrees to pay to Supplier all Fees indicated in each applicable Order Form and/or Project Plan and any Additional Charges agreed between the parties in writing from time to time.
  - 4.2. Invoicing. Unless otherwise agreed in writing in an Order Form and/or Project Plan, Supplier shall invoice the Customer as follows:
    - 4.2.1. for subscription Software licences, annually in advance;
    - 4.2.2. for Website Hosting Services, annually in advance;
    - 4.2.3. for Support and Maintenance Services, annually in advance; and / or
    - 4.2.4. for all other Services and/or Additional Charges, monthly in arrears.
  - 4.3. Payment Terms. All payments of Fees and Additional Charges are non-refundable (except as expressly set out in these terms and conditions) and shall be made within thirty (30) days of the date of the relevant invoice (unless stated otherwise in the relevant Order Form and / or Project Plan).
  - 4.4. Interest. Supplier reserves the right to charge the Customer interest in respect of the late payment of any undisputed sum due (whether before or after judgment) at the rate of 5% per annum above the base rate for the time being in force of The Royal Bank of Scotland plc from the due date until payment in full.
  - 4.5. VAT. Unless agreed otherwise in writing, all Fees stated in an Order Form and/or Project Plan are expressed exclusive of value added tax and any value added tax arising in respect of an Order Form and/or Project Plan shall be paid by the Customer.
  - 4.6. No set-off. The Customer shall not be entitled to withhold or defer payment on account of any claim, counterclaim or setoff.
  - 4.7. Direct Debit. Supplier may offer the Customer options to pay for the Software, Services and Deliverables by Direct Debit. The Direct Debit payments will be collected from the Customer's nominated account in advance to the value agreed.

4.8.  cancelling Direct Debit. The Customer has the right to cancel the Direct Debit by providing not less than three months' notice in writing to Supplier. If the Customer cancels its direct debit payments or otherwise fails to make any payment due, Supplier can suspend provision of the Software and/or the Services and Deliverables with immediate effect without giving written notice to the Customer.

## 5. Software Restrictions

5.1. Restrictions. Customer agrees that it will not (and will ensure that its Authorised Users will not) without the prior written consent of Supplier:

- 5.1.1. attempt to disassemble, decompile or reverse engineer (save to the extent such right may not be excluded under applicable law), translate, modify, lease, rent, loan, redistribute, sub-lease, sub-licence, re-sell or create derivative works from any aspect of the Software, the Database, the Services, the Website and/or the App;
- 5.1.2. remove any product identification, proprietary, copyright or other notices contained in the Software or Documentation;
- 5.1.3. provide or otherwise make available the Software to any person other than the Authorised Users and the Customer will procure that all Authorised Users comply with these terms and conditions;
- 5.1.4. access the Website and / or the App or use the Software to perform any unlawful activity or to store or transmit or otherwise use any illegal content;
- 5.1.5. introduce any Virus into the Software, the Database, the Website, the App or Supplier's other networks and/or systems;
- 5.1.6. access or attempt to access the information or content of other customers or users or to penetrate or attempt to penetrate any security measures; or
- 5.1.7. use the On-Premise Software on any equipment other than the Designated Equipment; or
- 5.1.8. use the Cloud Software in any manner other than as contemplated by these terms and conditions and / or the relevant Contract.

5.2. Customer obligations. The Customer shall:

- 5.2.1. reproduce on any copy of the Software (and Documentation) (whether in electronic or printed format) Supplier's copyright and trade mark notices;
- 5.2.2. maintain an up-to-date written record of the number of copies of the Software and Documentation and their location and upon request promptly produce such record to Supplier;
- 5.2.3. notify Supplier immediately if the Customer becomes aware of any unauthorised use of or access to the whole or any part of the Software (including the Documentation) or the Database by any third party;
- 5.2.4. without prejudice to the foregoing, take all such other steps as shall from time to time be necessary to protect the Confidential Information and Intellectual Property Rights of Supplier in the Software (including the Documentation) and the Database; and
- 5.2.5. provide reasonable access to its premises to Supplier in order for Supplier to verify the Customer's compliance with these and conditions and/or the relevant Contract and to recover any On-Premise Software or Hardware which has not been paid for in accordance with these terms and conditions and/or the relevant Contract.

## 6. Third Party Products

6.1. Customer acknowledgement. Where Customer wishes to purchase any Third Party Products in connection with the provision of the Services and Deliverables by the Supplier, the Customer acknowledges that it is solely responsible for procuring the relevant Third Party Products directly from the relevant third party. Supplier will have no responsibility for, or Liability to the Customer for any Third Party Products purchased by the Customer.

## 7. Intellectual Property Rights

7.1. Background IP. Nothing in these terms and conditions and / or any Contract will affect the ownership of any Intellectual Property Rights in any Background IP, which will remain the property of the party that contributes it. No licence to use any Intellectual Property Rights is granted or implied by these terms and conditions except the rights explicitly granted in these terms and conditions.

7.2. Supplier Background IP Licence. Supplier grants to the Customer a royalty free, non-exclusive, non-transferable licence for the duration of the relevant Contract to use its Background IP solely to the extent necessary for the Customer to make use of the Services and Deliverables provided by Supplier under the relevant Contract and for no other purpose.

7.3. Customer Background IP Licence. Customer grants to Supplier a royalty-free, non-exclusive licence to use its Background IP solely to the extent necessary to perform its obligations under these terms and conditions and / or the relevant Contract.

- 7.4. Customer Materials. The Customer warrants to the Supplier that it has the necessary right, title or licence to use the Customer Materials in connection with the provision of the Services and Deliverables by the Supplier.
- 7.5. Supplier Property. All Intellectual Property Rights in the Software (including the Documentation), the Website, the App, the Services, the Deliverables, the Design Concepts and the Database are the exclusive property of Supplier or its licensors (as applicable) and, save as expressly set out in these terms and conditions, the Customer shall not acquire any right or interest in, or title to, all or any part of the Software (including the Documentation), the Website, the App, the Services, the Deliverables or the Database.
- 7.6. Customer Data. Save as set out in **clause 7.7**, nothing in these terms and conditions and/or any Contract shall serve to assign, transfer or grant to Supplier any right or interest in, or title to, the Customer Data.
- 7.7. Customer Data Licence. The Customer grants to Supplier, a non-exclusive, non-transferrable licence to store, access and use the Customer Data (including the right to make back-up copies of the Customer Data) solely as required by Supplier to perform its obligations under these terms and conditions and / or the relevant Contract.
- 7.8. Use of Customer Data. Notwithstanding **clause 7.7**, Supplier may reasonably use:
- 7.8.1. aggregate usage data that it may extract from Customer's general use of the Software, the Website, the App or the Database (which in no event shall include any Personal Data or identify the Customer);
- 7.8.2. all feedback that Customer provides with respect to the Software, the Website, the App or the Database.
- 7.9. Deliverables. Subject to **clause 7.10** and upon receipt of full payment for the Deliverables by Supplier, the Supplier grants to the Customer a non-exclusive, non-transferable licence to use the Deliverables for its own internal business purposes in accordance with these terms and conditions and the terms of the relevant Contract.
- 7.10. Supplier retained ownership. Supplier retains ownership of the architecture and prototype of any graphic designs (including all Design Concepts) used in connection with the Deliverables provided to the Customer under any Contract, which Supplier may re-use in the same or similar structure and layout as may be required by Supplier to provide Services to other customers from time to time.
- 8. Warranty**
- 8.1. Mutual Warranties. Each party warrants to the other party that, as of the date of the relevant Contract:
- 8.1.1. it is duly incorporated and validly existing under applicable laws and in good financial standing;
- 8.1.2. it is duly authorised to enter into and perform its obligations under these terms and conditions and/or the relevant Contract; and
- 8.1.3. it is in compliance with all applicable laws related to the performance of its obligations under these terms and conditions and/or the relevant Contract, including (without limitation) the Data Protection Laws.
- 8.2. Supplier Warranties. Subject to **clause 8.4**, Supplier warrants to the Customer that:
- 8.2.1. it will perform the Services with reasonable care and skill;
- 8.2.2. it will use reasonable endeavours to provide the Services, Software and any Deliverables in accordance with the relevant Project Plan in all material respects;
- 8.2.3. it will use reasonable endeavours to meet any performance dates specified in the Project Plan but any such dates shall be estimates only and time for delivery shall not be of the essence of the Contract; and
- 8.2.4. the Customer's use of the Software as contemplated by these terms and conditions and/or the relevant Contract does not, so far as Supplier is aware, infringe the Intellectual Property Rights of any third party.
- 8.3. Notification. The Customer shall give notice to Supplier as soon as it is reasonably able upon becoming aware of a breach of warranty.
- 8.4. Limitations. The warranties set forth in **clause 8.2** shall not apply to warranty claims arising out of or in connection with:
- 8.4.1. the use of the Software not in accordance with the Documentation;
- 8.4.2. modifications to the Software or source code which were not authorised in writing by Supplier (with such authorisation to be given at Supplier's absolute discretion);
- 8.4.3. the use of the Software by the Customer in breach of these terms and conditions and/or the relevant Contract;
- 8.4.4. delays in performing or failure to perform Supplier's obligations under the Contract, including implementing any Project Plan which result directly or indirectly from the Customer's failure to fulfil any of its obligations as set out in these terms and conditions and/or the Project Plan. Supplier reserves the right to invoice for any additional expenses reasonably incurred as a result of such delays.

- 8.5. **Remedies.** Supplier's sole Liability (and Customer's exclusive remedy) for any breach of the warranties set forth in **clause 8.2** shall be, in Supplier's sole discretion, to either (a) use commercially reasonable efforts to provide Customer with an error-correction or work-around that corrects the reported non-conformity or infringement; or (b) to replace or modify the non-conforming or infringing Software so that it conforms or becomes non-infringing without substantially compromising its functionality and / or to re-perform the relevant Services. If Supplier determines such remedies to be impracticable within a reasonable period of time, Supplier may terminate the applicable Contract and refund the Fees paid for the non-conforming or infringing Software.
- 8.6. **Disclaimer.** THE WARRANTIES IN THIS **CLAUSE 8** ARE LIMITED WARRANTIES AND EXCEPT AS EXPRESSLY SET FORTH IN THIS **CLAUSE 8**, SUPPLIER MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SUPPLIER MAKES NO WARRANTY THAT THE CUSTOMER'S USE OF THE SOFTWARE WILL BE TIMELY, UN-INTERRUPTED OR ERROR-FREE.

## **9. Customer Responsibilities**

### **9.1. Customer Undertakings.** The Customer undertakes to Supplier that it shall:

- 9.1.1. co-operate with Supplier in all matters relating to the Services and the Customer shall appoint and notify their manager in relation to the Project, who shall have the authority contractually to bind the Customer on matters relating to that Project, and through whom questions and enquiries relating to the Services or Deliverables will be channeled by Supplier;
- 9.1.2. provide to Supplier, their agents, sub-contractors and employees, in a timely manner and at no charge, such access to the Customer's premises, office accommodation, data and such other facilities as reasonably requested by Supplier to provide the Services;
- 9.1.3. provide, in a timely manner, all materials and information as may be reasonably required by Supplier in order to provide the Services and ensure that it is accurate in all material respects.
- 9.1.4. where access is required by Supplier to carry out works at the Customer's premises: (i) be responsible (at the Customer's own cost) for preparing the relevant premises for the supply of the Services; and (ii) inform Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- 9.1.5. ensure that all equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms with all standards reasonably required by Supplier in order to perform the Services;
- 9.1.6. obtain and maintain all necessary licenses, authorisations, permissions and consents as may be required in connection with the Customer's use and receipt of the Software, the Services and Deliverables, the Customer Data and the Customer Materials;
- 9.1.7. comply with all applicable law in relation to the Customer's use and receipt of the Software, the Services and Deliverables, the Customer Data and the Customer Materials; and
- 9.1.8. ensure that any Customer Materials used by the Customer in connection with the Services do not infringe the Intellectual Property Rights of any third party and do not contain any Inappropriate Content.

- 9.2. **No Liability.** Supplier will not be deemed to be in breach of these terms and conditions and / or the relevant Contract and will have no Liability to the Customer for any failure or delay in performance of its obligations under these terms and conditions and / or the relevant Contract to the extent that such failure or delay in performance arises as a result of a breach by the Customer of its obligations in **clause 9.1**.

## **10. Limitation of liability**

- 10.1. **No limit.** Nothing in these terms and conditions or any Contract shall limit or exclude Supplier's Liability for: i) death or personal injury resulting from its negligence; ii) fraud or fraudulent misrepresentation; or (ii) any matter for which it is not permitted by law to exclude or limit, or attempt to exclude or limit, its liability.
- 10.2. **Limitation on liability.** Subject to **clause 10.1**, Supplier's maximum aggregate Liability which arises from Events which occur in any one calendar year will not exceed the greater of:
- 10.2.1. £10,000; or
- 10.2.2. 100% of the total Fees and / or Additional Charges paid by the Customer to the Supplier under the relevant Contract in the immediately preceding six (6) month period from the date the claim arose.
- 10.3. **Exclusions of liability.** Subject to **clause 10.1**, Supplier shall have no Liability to the Customer for any:
- 10.3.1. loss of profit (whether direct, indirect or consequential);
- 10.3.2. loss of use, loss of revenue, loss of production or loss of business (whether direct, indirect or consequential);
- 10.3.3. loss of goodwill, loss of reputation or loss of opportunity (whether direct, indirect or consequential);



- 10.3.4. loss of bargain (whether direct, indirect or consequential);
- 10.3.5. loss of use or value of any data or software (whether direct, indirect or consequential);
- 10.3.6. liability of the Customer to any third parties (whether direct, indirect or consequential);
- 10.3.7. indirect, consequential or special loss, even if such loss was reasonably foreseeable or Supplier had been advised of the possibility of the Customer incurring the same; or
- 10.3.8. damage to any of the Customer Materials provided to Supplier.
- 10.4. **Data.** Supplier accepts no Liability in relation to the data or information (including Customer Data) contained in the Database or otherwise used by the Customer in connection with the Software. It is the Customer's responsibility to verify the data or information (including the Customer Data) contained in the Database and / or the Software for accuracy and completeness. Supplier does not provide any guarantee or assurance that the data or information (including the Customer Data) contained in the Database and / or the Software will be accurate or complete and any use of or reliance upon the data or information (including the Customer Data) contained in the Database and / or the Software will be at the Customer's sole risk.
- 10.5. **Single claim for the same loss.** If a number of Events give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under these terms and conditions.
- 10.6. **No conferred rights or remedies.** Nothing in this **clause 9** shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 10.7. **Indemnity.** The Customer will indemnify Supplier against all losses, liabilities, damages or costs (including all reasonable legal and other professional costs) sustained or incurred by Supplier arising directly or indirectly from any claim that the Customer Materials:
  - 10.7.1. infringe the Intellectual Property Rights of any third party; or
  - 10.7.2. constitute Inappropriate Content.
- 11. Confidentiality**
- 11.1. **Obligations.** Each party undertakes that it will, subject to **clause 11.2:**
  - 11.1.1. only use the other party's Confidential Information for the purpose of performing its obligations and exercising its rights under these terms and conditions and/or the relevant Contract;
  - 11.1.2. keep the other party's Confidential Information secret, safe and secure;
  - 11.1.3. not disclose the other party's Confidential Information to any other person.
- 11.2. **Exclusions.** Each party may disclose the other party's Confidential Information:
  - 11.2.1. to the extent required by law, by an order of a court of competent jurisdiction or regulatory body to which that party is subject or to which that party submits;
  - 11.2.2. to those of its officers, directors, employees and professional advisors who need access to that Confidential Information so that it can perform its obligations and exercise its rights under these terms and conditions and/or the relevant Contract.
- 11.3. **Third party compliance.** A party disclosing the other party's Confidential Information under **clause 11.2** will procure that each person to whom it discloses that Confidential Information is made aware of the confidential nature of the Confidential Information and will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **clause 11**.
- 12. Termination and Suspension**
- 12.1. **Mutual termination rights.** Either party may terminate a Contract by notice in writing to the other party:
  - 12.1.1. if the other party commits a material breach of any term of these terms and conditions and/or the relevant Contract and, in the case of a breach capable of being remedied, fails to remedy such breach within sixty (60) days of a written request to remedy by the non-breaching party; or
  - 12.1.2. if the other party becomes Insolvent.
- 12.2. **Supplier termination.** Supplier shall be entitled to terminate a Contract (in whole or in part) if the Customer fails to make payment of any undisputed Fees or Additional Charges within fourteen (14) days of the due date.
- 12.3. **Suspension.** Without prejudice to **clause 12.2**, Supplier shall be entitled to suspend the provision of the Services and/or the Customer's access to and use of the Software in the event that the Customer fails to make payment of any Fees or Additional Charges on the due date (but this will not apply to any Fees that are subject to a bona fide dispute).
- 12.4. **Consequences of termination.** Upon termination of a Contract for any reason:
  - 12.4.1. any and all licences granted under the Contract shall immediately terminate;
  - 12.4.2. the Customer will be entitled to access the Pricing Software on a 'view only' basis, in order to allow the Customer to view historic usage data without any other rights to use the Pricing Software for any reason;
  - 12.4.3. without prejudice to **clause 15**, Supplier may, if requested by Customer, provide the Customer with a copy of the Customer Data for its own records, subject to the payment of any applicable Additional Charges to recover the Customer Data for the Customer;

- 12.4.4. all outstanding invoices submitted in accordance with these terms and conditions shall become due and payable by the Customer; and
- 12.4.5. Supplier shall use reasonable endeavours to make available to the Customer for a period of three months after termination any materials Supplier may have prepared for the Customer as part of the Services. The Customer acknowledges that any request for such materials following the three month period may not be possible and/or may be subject to additional fees.
- 12.5. Return of Information. Immediately upon termination of a Contract for any reason, the Customer shall, at Supplier's sole option, either: i) return all copies of the Software, Documentation, Hardware (if any) and Confidential Information (belonging to Supplier) in its possession; or ii) delete and destroy all copies of the Software, Documentation, Hardware and Confidential Information (belonging to Supplier) in its possession and certify in writing to Supplier that the Customer has complied with this clause 12.5.
- 13. Data Protection
- 13.1. The Customer acknowledges and agrees that Personal Data records may be submitted to a credit reference agency, and authorizes Supplier to process Personal Data in connection with the provision of the Services.
- 13.2. Supplier undertakes that it will:
  - 13.2.1. process Personal Data in accordance with the Customer's executed instructions under the relevant Contract and in accordance with these terms and conditions;
  - 13.2.2. implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk associated with the nature, scope, context and purposes of the processing under the relevant Contract;
  - 13.2.3. not engage another third party to process Personal Data on the Customer's behalf without the specific or general written authorisation of the Customer. Where the Customer provides authorization to engage a third party processor, Supplier will inform the Customer of any intended changes concerning the addition or replacement of other processors, thereby giving the Customer the opportunity to object to such changes;
  - 13.2.4. not transfer the Personal Data outside the European Economic Area unless the Customer provides Supplier with written instructions or Supplier is required to do so by European Union or Member State law to which Supplier is subject; in which case, Supplier shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
  - 13.2.5. ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. This includes, but is not limited to, Supplier's employees and agents;
  - 13.2.6. notify the Customer of a data protection breach affecting the Personal Data it processes under the relevant Contract immediately, and in any event, no later than 24 hours from Supplier becoming aware of the breach;
  - 13.2.7. assist the Customer, where required, to complete a data protection impact assessment;
  - 13.2.8. assist the Customer, where required and in any reasonable way, to fulfil its obligation to respond to requests for the data subjects' exercising their rights under Chapter III of the General Data Protection Regulation;
  - 13.2.9. delete or return to the Customer, as instructed by the Customer, all Personal Data processed under this agreement and undertakes to delete existing copies unless European Union or Member State law requires storage of the Personal Data;
  - 13.2.10. make available to the Customer all information necessary to demonstrate compliance with Article 28 of the General Data Protection Regulation;
  - 13.2.11. allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer;
  - 13.2.12. cooperate, on request, with the Information Commissioner's Office (or other supervisory authority) in the performance of the processing activity governed by this agreement;
  - 13.2.13. inform the Customer immediately if, in its view, an instruction by the Customer infringes the General Data Protection Regulation or other European Union or Member State data protection provisions;
  - 13.2.14. if it sub-contracts the processing under the relevant Contract to a third party, enter into a written agreement with the third party which imposes the same or similar data protection obligations as are imposed on Supplier in these terms and conditions. Supplier shall remain fully liable and responsible to the Customer for the performance of the sub-contractor's obligations.
- 13.3. The Customer warrants and undertakes to Supplier that:
  - 13.3.1. its Personal Data is accurate and the Customer shall keep their Personal Data fully up to date at all times during the continuance of the relevant Contract; and
  - 13.3.2. its instructions for processing of Personal Data will not put Supplier in breach of the Data Protection Laws.

- 13.4. If Supplier reasonably considers that any instructions from the Customer relating to Processing of Personal Data may put Supplier in breach of Data Protection Laws, Supplier will be entitled not to carry out that Processing and will not be in breach of these terms and conditions and / or the relevant Contract or otherwise liable to the Customer as a result of its failure to carry out that Processing.
- 13.5. The Customer shall indemnify Supplier against any loss or damage which Supplier may sustain or incur as a result of any breach by the Customer of its obligations under this **clause 13**.
- 14. Force majeure**
- 14.1. Event of Force Majeure. Neither party shall be liable for any breach of its obligations under these terms and conditions and/or any Contract to the extent that such breach is caused by reasons beyond its reasonable control including but not limited to fires, strikes or lock outs (affecting its own or third party workforce), insurrection or riots, acts of terrorism, embargoes, container shortages, wrecks or delays in transportation, failure of a utility service or telecommunications network or the internet, inability to obtain supplies and raw materials requirements, orders or regulations of any civil or military authority or any epidemic or pandemic (each an 'Event of Force Majeure').
- 14.2. Notification of Force Majeure. Supplier and the Customer agree to give notice to the other upon becoming aware of an Event of Force Majeure, with such notice to contain all reasonable details of the circumstances giving rise to the Event of Force Majeure.
- 14.3. Termination. If a default due to an Event of Force Majeure shall continue for more than four (4) weeks then the party not in default shall be entitled to terminate the relevant Contract. Neither party will have any Liability to the other in respect of the termination of the relevant Contract pursuant to this **clause 14.3**.
- 15. Backup and Disaster Recovery**
- 15.1. The Customer shall be responsible for ensuring that it has sufficient back up and disaster recovery protocols in place in order to restore the data (including the Customer Data) within the Database and / or the Software in the event of any loss, damage or corruption to such data. Supplier is not responsible for providing backup copies of any data (including the Customer Data) within the Database and / or the Software to the Customer and it is the Customer's responsibility to put in place appropriate measures and insurance to protect against any loss, damage or corruption to such data.
- 16. Waiver**
- 16.1. The waiver by either party of a breach or default of any of the provisions of these terms and conditions and/or any Contract by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 17. Notices**
- 17.1. Any notice request instruction or other document to be given in connection with these terms and conditions and/or any Contract shall be delivered or sent by first class post or by e-mail to the address or e-mail address of the other party set out in the relevant Contract (or such other address as may have been notified by a party in writing to the other) and any such notice or other document shall be deemed to have been served:
- 17.1.1. if delivered, at the time of delivery; and
- 17.1.2. if sent by post or e-mail, upon the expiration of 48 hours after posting or e-mailing.
- 18. Invalidity and severability**
- 18.1. If any provision of these terms and conditions shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of these terms and conditions and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 19. Entire agreement**
- 19.1. These terms and conditions, together with the relevant Contract, constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2. Each party acknowledges that in entering into a Contract, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not expressly set out in the relevant Contract and/or these terms and conditions.

- 19.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions and/or any Contract.
- 19.4. Nothing in this **clause 19** shall limit or exclude either party's Liability for fraud or fraudulent misrepresentation.
- 20. Successors**
- 20.1. These terms and conditions together with the relevant Contract shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.
- 21. Assignment and sub-contracting**
- 21.1. The Customer shall not be entitled to assign, sub-contract otherwise transfer any Contract nor any of its rights or obligations under these terms and conditions nor sub-license the use (in whole or in part) of the Software without the prior written consent of Supplier.
- 22. Third Party Rights**
- 22.1. These terms and conditions do not confer any rights on any person or party (other than the parties specified in the relevant Contract and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 23. Non-solicitation**
- 23.1. The Customer agrees that it will not, without the prior written consent of Supplier, directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person during the term of any Contract and for a period of 1 year following termination of the relevant Contract for any reason, solicit or entice, or endeavor to solicit or entice, away from Supplier any person employed by Supplier in the then preceding 12 months and whose role either wholly or partly relates to the supply of the Services or the Software. For the purposes of this clause, "solicit" or "entice" means the soliciting or enticing of such person with a view to engaging such person as an employee, director, sub-contractor, consultant or independent contractor or through a company owned by such person or his or her family, but will not apply in the case of any such person responding without enticement to a job advertisement which is capable of being responded to by members of the public generally.
- 24. Dispute Resolution**
- 24.1. If any dispute arises out of or in connection with these terms and conditions and / or any Contract (including (without limitation) in relation to any non-contractual obligations) (a "**Dispute**") the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Either party may initiate a mediation by serving a written notice (a "**Mediation Notice**") on the other party identifying the Dispute it believes has arisen and requesting that Dispute be referred to mediation.
- 24.2. Unless a mediator has been agreed upon by the parties and has confirmed his appointment within 28 days of the date of service of the relevant Mediation Notice, a mediator will, at the written request of either party, be nominated by CEDR. The parties will use all reasonable endeavours to procure that the mediation will start within 45 days of the date of service of the Mediation Notice.
- 24.3. If the Dispute is not resolved within 90 days of the date of service of the Mediation Notice, either party may commence proceedings in accordance with **clause 25**.
- 24.4. Subject to **clause 24**, the procedures set out in **clauses 24.1 to 24.3** will be followed prior to the commencement of proceedings by either party in relation to a Dispute.
- 24.5. **Clauses 24.1 to 24.4** will not prevent or delay either party from:
- 24.5.1. seeking orders for specific performance, interim or final injunctive relief;
- 24.5.2. exercising any rights it has to terminate a Contract; or
- 24.5.3. commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.
- 25. Law**
- 25.1. These terms and conditions, together with any Contract, and any non-contractual disputes arising out of or in connection with them, shall be governed by and construed in accordance with the laws of England and Wales and, subject to **clause 24**, the parties submit to the exclusive jurisdiction of the English courts.

Schedule 1  
Terms Applicable to the Provision of Pricing Software

**1. Pricing Software**

- 1.1. Grant of Licence. Subject to these terms and conditions, together with the terms of the relevant Contract, Supplier grants to the Customer a non-exclusive, non-transferable and non-sub licensable licence to access and use the Pricing Software (and where appropriate, the Documentation) solely in connection with the Database and for no other purpose.
- 1.2. Licence Term. The Subscription Period will be included in the Order Form.
- 1.3. Delivery. If the Customer licenses the on-premise version of the Pricing Software, the On-Premise Software and associated Documentation shall be delivered by electronic means. If the Customer licenses the Pricing Software on a “Software-as-a-Service” subscription basis, Customer will receive access to the Cloud Software via the Cloud Site.
- 1.4. Third party access to Software. The Customer will not provide access to the Pricing Software to any third party without the prior written consent of Supplier. Where the Customer provides access to use the Pricing Software to any third party in accordance with this clause:
- 1.4.1. the Customer shall be responsible for ensuring that such third party is made aware of these terms and conditions and will comply with them when using the Pricing Software as if they were the Customer; and
- 1.4.2. any Additional Charges which may be applicable as a result of such third party access must be agreed in writing in advance of the Customer providing such third party with access to use the Pricing Software.

Business Micros

Schedule 2  
Terms Applicable to the Provision of Modules

**1. Modules**

- 1.1. Grant of Licence. Subject to these terms and conditions, together with the terms of the relevant Contract, Supplier grants to the Customer a non-exclusive, non-transferable, non-sub licensable, term limited licence to access and use the Modules (and where appropriate, the Documentation).
- 1.2. Delivery. Delivery of the Modules will be made electronically. Delivery of the Modules will be deemed to occur when the Modules are sent to the Customer electronically. If the Customer licenses the on-premise version of the Modules, the On-Premise Software and associated Documentation shall be delivered by electronic means. If the Customer licenses the Modules on a “Software-as-a-Service” subscription basis, Customer will receive access to the Cloud Software via the Cloud Site.
- 1.3. Remedies. Any failure or defect which may be discovered in partial delivery of the Modules shall not entitle the Customer to cancel the Contract. Any such failure should be noted and immediately advised to Supplier (if in writing by recorded delivery) who shall use reasonable endeavours to remedy the failure or defect in a timely manner.
- 1.4. Modification. Supplier reserves the right to modify or update the Modules at any time to improve the content or service.

**2. Term and Termination**

- 2.1. All Modules are licenced together with an initial twelve month subscription to the Support and Maintenance Services. Unless otherwise agreed in writing by the parties, the Contract for the Support and Maintenance Services shall automatically renew for successive 12 month periods on each anniversary of the date of purchase of the relevant Modules.
- 2.2. The Customer may notify Supplier no less than 30 days before the expiry of the current year’s subscription to the Support and Maintenance Services that it does not wish to renew the Contract. The Contract will then terminate on the date of the anniversary for renewal but the Customer will remain liable for the payment of all monthly maintenance payments that remain within the current year of service.

**Schedule 3**  
**Terms Applicable to the Provision of Marketing Services**

**1. Marketing Services**

- 1.1. Delivery of the Services. Delivery of the Services, either by electronic transfer or actual documentation or delivery of product, shall be accepted by the Customer when tendered or dispatched to the Customer and notification that the work has been completed has been given by Supplier. Whilst every effort will be made by Supplier to effect delivery in accordance with pre-arranged dates, no guarantees as to dates of delivery by Supplier is to be implied and Supplier will have no Liability for any loss or damage occasioned by delay in delivery however caused.
- 1.2. Suspension. Should work be suspended at the request of, or delayed through any act or omission of the Customer, for a period of seven days or more, Supplier shall be entitled to payment for work already carried out and materials ordered, and all works will cease until the cause of the suspension is rectified to the reasonable satisfaction of both parties.
- 1.3. Acceptance. Any failure or defect which may be discovered in any partial delivery of the Marketing Services shall not entitle the Customer to cancel the Contract. Any such failure or defect should be noted, and immediately advised to Supplier, (if in writing by recorded delivery) who shall take the appropriate action to remedy the failure or defect in a timely manner.
- 1.3.1. Delays. There will be occasions during the progress of the works when Supplier will request the guidance and/or agreement of the Customer in respect of electronic page layouts, data linkages and artwork. The Customer or their approved agent must respond in a timely manner to ensure such guidance and/or agreement is provided to minimise any delays to the Project. Supplier will not be liable to the Customer for any delays in the Project caused by the acts or omissions of the Customer.

**2. Fees**

- 2.1. Time and materials basis. Where the Marketing Services are provided on a time and materials basis:
- 2.1.1. the Fees will be calculated on the basis of a seven hour day, generally worked between 9:00 am and 5.00 pm on weekdays (excluding public holidays), although the exact timings may vary;
- 2.1.2. an overtime rate of 150% of the normal daily fee rate shall apply on a pro-rata basis for each day or part thereof for any time worked by individuals whom Supplier engages on the Project and who is required to carry out work outside the hours referred to in **clause 2.1.1** of this **Schedule 3**; and
- 2.1.3. unless otherwise agreed, Supplier shall invoice as noted in the Project Plan and, where not otherwise stated or agreed, monthly in arrears for its Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned.
- 2.2. Fixed price basis. Where the Services are provided for a fixed price, the total Fee for the Services shall be the amount set out in the Project Plan. The total Fee shall be paid by the Customer to Supplier in full or in any instalments as are set out in the Project Plan. At the end of a period specified in the Project Plan in respect of which an instalment is due, Supplier shall invoice the Customer for the Fees that are then payable, together with expenses, the costs of materials and VAT, where appropriate.
- 2.3. Additional Costs. Any fixed price and daily rate contained in the Project Plan excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Supplier may engage in connection with the Marketing Services, the cost of any materials and the cost of Third Party Products reasonably and properly provided by third parties and required by Supplier for the supply of the Marketing Services. Such expenses, materials and Third Party Products shall be invoiced by Supplier at cost plus 10%

**3. Termination**

- 3.1. Unless the nature of the Services to be provided requires otherwise and is specified in the Project Plan, the Contract shall terminate automatically on completion of the Project in accordance with the Project Plan unless terminated earlier in accordance with **clause 12** of the terms and conditions.

Terms applicable to the Provision of Website Design and Development Services

**1. Website Design and Development Services**

- 1.1. Where any of the Services to be provided by Supplier, as specified in the Project Plan, comprise website design and development for the Customer, the provisions of **clauses 2 to 4 of this Schedule 4** shall apply. Supplier at all times and at its own discretion reserves the right to refuse services and / or access to its servers. Where additional work is requested by the Customer that is not specified in the agreed Project Plan this will be subject to an additional quotation to be provided by Supplier on receipt of supplementary / additional specification. If such additional work is required as part of an existing Project, this may affect time scale and overall delivery time of the original Project.
- 1.2. Where Supplier is to provide Website Design and Development Services, it will design, develop and deliver the Customer Website and, where provided in the Project Plan, host the Customer Website on its own server (in accordance with the provisions of **Schedule 5**). Where a Customer Website is created, Supplier reserves the right to move the Customer Data to a different server without notice to the Customer. The Customer agrees that the standard development platform (available upon request or at our website ([www.theconsultancy.co.uk](http://www.theconsultancy.co.uk)) is an agreeable platform for development of the website and all acceptance testing will occur only on the standard development platform. The Customer further agrees that any requests relating to hardware or software outside the standard development platform will be deemed additional work.
- 1.3. Where Supplier has so agreed in the Project Plan, Supplier shall update the Customer Website with the Customer Materials provided from time to time by the Customer subject to the payment of such hourly rate as shall be agreed in the Project Plan.
- 1.4. Where the Customer is granted access to the Supplier's server to update the Customer Website other than via any content management system or other technology provided by Supplier, if any issues or errors arise by reason of the Customer's acts or omissions, Supplier is under no obligation to provide support to the Customer, although Supplier may do so, subject to payment of its standard hourly charges.
- 1.5. Supplier shall endeavour to use best practices to ensure the security and protection of the Customer Website, however Supplier does not warrant, represent or guarantee that the Customer Website will be safe, secure, error free or free from Viruses. Supplier shall use reasonable endeavours to remedy any defective code and reserves the right to charge for the cost of any time undertaken in such activity. Supplier will have no Liability to the Customer for any direct, indirect or consequential losses or costs suffered by the Customer arising out of or in connection with any third party interference with the Customer Website.
- 1.6. The Customer shall ensure that any Customer Materials to be included on the Customer Website do not infringe any applicable laws, regulations or third party rights (including all Intellectual Property Rights) and do not contain any Inappropriate Content.
- 1.7. Supplier may include the statement 'Designed and built by The Consultancy' or words to similar effect on the home page of the Customer Website as a hyperlink to [www.theconsultancy.co.uk](http://www.theconsultancy.co.uk) or [www.theglazingvault.com](http://www.theglazingvault.com) for a minimum period of twenty-four months.

**2. Acceptance**

- 2.1. Once Supplier has completed the design and development of the Customer Website (the URL of which is specified in the Project Plan), Supplier shall run such Acceptance Tests as shall reasonably be required to determine or ascertain whether the Customer Website complies in all material respects with the Project Plan.
- 2.2. Acceptance of the Customer Website will take place when the Customer Website passes the Acceptance Tests (as reasonably determined by Supplier). If the Customer does not agree with Supplier that the Customer Website has passed the Acceptance Tests, the Customer will notify the Supplier in writing within five Business Days of completion of the Acceptance Tests by the Supplier, providing reasonable details of the errors or issues which the Customer has with the Customer Website and the Supplier will, subject to **clause 2.3**, use reasonable endeavours to remedy any errors or issues raised by the Customer so as to ensure that the Customer Website complies in all material respects with the Project Plan.
- 2.3. If any failure to pass the Acceptance Tests arises solely as a result of the acts or omissions of the Customer or anyone acting on behalf of the Customer ("**Customer Defect**"), the Customer Website shall be deemed to have passed the Acceptance Tests notwithstanding the Customer Defect.
- 2.4. Supplier shall provide all assistance reasonably requested by the Customer in remedying such Customer Defect by supplying such additional services or products as Supplier may at its sole discretion consider necessary. The Customer shall pay in full for all such additional services and products when invoiced by Supplier and such invoice shall be at current fees and prices.
- 2.5. Notwithstanding the other provisions of this **clause 2**, the Customer Website will be deemed to have been accepted by the Customer if, following completion of the Acceptance Tests by the Supplier, any of the following occur:



- 2.5.1. the Customer uses any part of the Customer Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes;
  - 2.5.2. the Customer Website can be accessed and/or viewed by the public for more than five Business Days;
  - 2.5.3. the Customer does not raise any errors or issues with the Customer Website within five Business Days of completion of the Acceptance Tests; or
  - 2.5.4. the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of five Business Days or more from the date on which Supplier is ready to commence running such Acceptance Tests or retests.
- 2.6. Any website that Supplier produces for the Customer will be supported in Microsoft Internet Explorer 11 and above and all other browsers on the latest versions of release no less than 12 months ago including Safari, Google Chrome and Firefox.

### **3. Consequences of Termination**

- 3.1. On expiry or termination of the Contract, other than by Supplier, Supplier shall return to the Customer the Customer Materials and shall provide to the Customer an electronic copy of the Customer Website (including all content on the Customer Website).

### **4. Trade Mark Registration and/or Domain Name Services**

- 4.1. Where any of the Services to be provided by Supplier, as specified in the Project Plan, comprise advice and services in relation to trade mark registration or domain name registration, the provisions of this **clause 4** shall apply.
- 4.2. Where explicitly stated and agreed in the Project Plan, Supplier shall use reasonable endeavours to obtain registration of any domain name(s) or trade mark(s) requested by the Customer.
- 4.3. The Customer warrants that it is the owner, or duly authorised licensee, of all Intellectual Property Rights and other rights for any trade mark or domain name for which they request Supplier to assist to obtain registration.
- 4.4. The Customer acknowledges that Supplier cannot guarantee that any name or design requested by the Customer will be available or approved for use and/or registration. The Customer is required to carry out their own enquiries in this respect, although Supplier may assist at the Customer's cost if so requested.
- 4.5. Supplier reserves the right to require the Customer to select a replacement domain name or trade mark and Supplier may suspend the provision of the Services if, in its opinion, there are reasonable grounds to believe that the Customer's choice of name is, or is likely to be, in breach of the provisions of this **clause 4**.
- 4.6. Supplier does not represent, warrant or guarantee that any domain name or trade mark applied for by the Customer or on its behalf will be registered in the Customer's name or is capable of being registered by it, or that use of such trade mark or domain name by the Customer will not infringe any Intellectual Property Rights or any other rights of any third party. Accordingly, Supplier will not be liable for any action taken by the Customer in respect of any requested domain name or trade mark prior to registration. Any fees payable to Supplier for the Services are not conditional upon obtaining any such registrations.
- 4.7. The registration of any domain name or trade mark and its ongoing use is subject to the relevant naming authority's or trade mark registration body's terms and conditions, as appropriate, and the Customer undertakes to comply with such terms and conditions.
- 4.8. The Customer acknowledges that its contact details, including details which may constitute Personal Data (such as name, address, telephone numbers and email address) will be passed to the relevant domain naming authority. The Customer acknowledges that it may be a condition for registration with such a naming authority for such information to appear on that naming authority's publicly-accessible 'WHOIS' database and the Customer hereby consents to their Personal Data being used in such a manner. Supplier reserves the right, however, to register any domain name under its own name.
- 4.9. The Customer hereby irrevocably waives any claims against Supplier in respect of any decision by any trade mark registration body or domain naming authority to refuse to register any trade mark or domain name and, without limitation, the Customer acknowledges that any application or other administration fee payable is non-refundable in any event.
- 4.10. Supplier accepts no responsibility for the use of any domain name or trade mark by the Customer and shall take no part in any dispute between the Customer and any third party in respect thereof. Supplier reserves the right, on becoming aware of a dispute concerning a domain name, at their sole discretion and without giving any reason, to either suspend or cancel the relevant service associated with the domain name, and/or to make such representations to the relevant naming authority as are deemed appropriate.

### **5. Graphic and Other Design Services**

- 5.1. Where any of the Services to be provided by Supplier, as specified in the Project Plan, comprise graphic and other design services, the provisions of this **clause 5 of this Schedule 4** shall apply.

- 5.2. Within 20 Business Days of approval of the Project Plan or at such other time as agreed between parties in the Project Plan, Supplier shall provide the Customer with the Design Concepts.
  - 5.3. Within 10 Business Days of receipt of the draft Design Concepts, or at such other time as agreed by both parties in the Project Plan, the Customer shall notify Supplier in writing either:
    - 5.3.1. that the Customer approves one of the draft Design Concepts, in which case the selected draft Design Concept shall become the final Design Concept; or
    - 5.3.2. that the Customer requires changes to the draft Design Concepts, in which case Supplier shall, within a further 10 (approximately) Business Days provide a further draft of the Design Concepts incorporating the suggested changes.
  - 5.4. The Customer acknowledges that any changes to the Design Concepts arising in respect of **clause 5.3.2 of this Schedule 4** may incur Additional Charges if the time or number of changes engaged by Supplier in carrying out such changes exceeds the total time or number of changes allocated for Design Concept reviews as set out in the Project Plan.
  - 5.5. If the Customer reasonably believes that the further draft of the Design Concepts provided by Supplier in accordance with **clause 5.3.2 of this Schedule 4** is not satisfactory, the Customer may at, at its own cost, revise the draft Design Concepts and present them to Supplier within five Business Days of the receipt of the draft from Supplier. Upon such receipt, Supplier will notify the Customer in writing within a further five Business Days whether such suggested alterations to the draft Design Concepts are feasible in whole or in part and the additional cost implications, if any, of the changes proposed by the Customer are to be incorporated.
  - 5.6. Within two Business Days of the Customer's receipt of Supplier's comments under **clause 5.5 of this Schedule 4**, the Customer shall either:
    - 5.6.1. approve the suggestions and the amended draft Design Concept selected by the Customer shall be the final Design Concept; or
    - 5.6.2. suggest further amendments to the draft Design Concepts in accordance with the provisions of **clause 5.5 of this Schedule 4** and that procedure shall continue until such time as the final Design Concept has been approved in accordance with the provisions of **this clause 5.6 of this Schedule 4**.
  - 5.7. The Customer is required to print the final artwork comprising the final Design Concept and fax or electronically transmit such artwork back to Supplier, by way of acceptance of it. In the event that the Customer has not so responded within 10 Business Days indicating their acceptance or rejection, the Customer will be deemed to have accepted the final Design Concept on the 11th Business Day following receipt. Should Supplier fail to receive the Customer's approval of artwork in accordance with the noted or any subsequently agreed timescale it shall consider the Project suspended and cease all further works until such time as the Customer's approval or further instructions are received. Should the Customer's failure to approve artwork result in a termination of the Contract, Supplier shall invoice for all costs incurred up to and including the date of such termination.
  - 5.8. The Customer shall be responsible for notifying Supplier prior to the preparation of the Project Plan of any specific advertising requirements or restrictions relevant to the particular profession, trade or industry in which the Customer operates insofar as they affect the Services Supplier is to provide. Supplier shall have no obligation to investigate or verify any such advertising requirements or restrictions and shall have no Liability to the Customer in the event that any information provided to us in this respect proves to be inaccurate.
- 6. Other Services**
- 6.1. Where the Services to be provided (whether by Supplier or as Third Party Products) comprise such marketing campaign aspects as pay-per-click advertising, search engine optimisation or assisting the Customer with their product placement or marketing strategy, the Customer acknowledges that Supplier cannot guarantee or quantify the results of any such campaign and such Services are to be used at the Customer's own risk.
  - 6.2. Where the Services result in the creation of any additional Intellectual Property Rights (such as, but not limited, to Intellectual Property Rights in software or interactive applications) not referred to in these terms and conditions or the Project Plan, such Intellectual Property Rights shall, unless agreed otherwise in writing, vest automatically in Supplier. Any license of such Intellectual Property Rights shall be on such terms as both parties shall agree in writing.

**Schedule 5**  
**Terms Applicable to the Provision of Website Hosting Services**

**1. Website Hosting Services**

- 1.1. Where requested by the Customer, Supplier will provide certain Website Hosting Services as set out in the relevant Order Form and/or Project Plan, which may include storage, bandwidth, compliance, backups (scheduled and on demand) and telephone support.
- 1.2. The following are specifically excluded from the Website Hosting Services:
  - 1.2.1. the cost of domain name registration;
  - 1.2.2. any access by the Customer to Supplier's web space via FTP or means other than a standards-compliant HTML web browser;
  - 1.2.3. advice or support to enquiries received from persons other than the Customer or their designated representatives;
  - 1.2.4. advice or support to enquiries outside of the Contract;
  - 1.2.5. adult or any content in contravention of UK or international law; and
  - 1.2.6. any mail distribution requirements other than by agreement between the parties.
- 1.3. The Customer will:
  - 1.3.1. only utilise the bandwidth allocated to it in its hosting package as set out in the relevant Contract. Additional fees will be charged for exceeding the relevant bandwidth allowance on the selected hosting package;
  - 1.3.2. only use properly licensed third party software in relation to the Website Hosting Services; and
  - 1.3.3. not display any materials on the Customer Website that: (i) break, contravene, infringe or violate any UK or foreign laws or regulations or any Intellectual Property Rights of Supplier or any other third party; (ii) are defamatory, slanderous, libelous, harassing, threatening, discriminatory based on gender, race or age or promote hate; and (iii) contain viruses or other computer programming defects that result in damage to Supplier or any third party.
- 1.4. The Customer acknowledges that:
  - 1.4.1. backups and maintenance of the Customer Website remain its sole responsibility and Supplier has no responsibility or Liability to the Customer to maintain the Customer Website or to back up the Customer Data hosted by Supplier;
  - 1.4.2. Supplier has no control over any content placed on the Customer Website by visitors to the Customer Website and Supplier does not purport to monitor the content of the Customer Website. Supplier reserves the right to remove content from the Customer Website at its discretion where it is reasonably believed to be Inappropriate Content;
  - 1.4.3. Supplier reserves the right to suspend access to its servers in the event that the Supplier reasonably suspects that the Customer is or may be in breach of these terms and conditions and / or the terms of the relevant Contract. The Supplier will provide the Customer with not less than three days' notice of any suspension of access to its servers and the Customer will be entitled to make submissions to the Supplier to demonstrate that it is not in breach of the terms and conditions and / or the relevant Contract and / or to remedy any breach identified by the Supplier.
  - 1.4.4. whilst Supplier shall use reasonable endeavours to ensure that the Customer Website is available at all times, any hosting is subject to the right of any third party provider of connectivity of any hosting services to the internet to temporarily suspend such connection as may be required to perform maintenance of the hosting environment, or to make any modification, change, addition to, or replacement of that third party's equipment, network or software as may be required to conform with any applicable safety or any other statutory or legal requirements, or at any other time. Any target hosting service level information provided to the Customer is for guidance only and Supplier makes no warranty, representation or guarantee that the Customer Website will be available at all times or for any period of time. Supplier will use reasonable endeavours to notify the Customer in advance of any downtime of availability of the Website Hosting Services; and
  - 1.4.5. Supplier does not warrant, represent or guarantee that the Website Hosting Services will be uninterrupted or error free.

**2. Term and Termination**

- 2.1. Supplier will provide the Website Hosting Services for the Customer on the basis that:
  - 2.1.1. the Customer agrees to an initial twelve (12) month term of service in the Contract;
  - 2.1.2. the Website Hosting Services, as specified in the Project Plan, commences from the first day that the Customer Website is provided for Acceptance Tests. The first payment, plus any setup charges (if any), shall be due in advance of any service being provided. Service shall begin upon Supplier's receipt of payment for such first term of service or upon a mutually agreed upon alternate date; and

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- 2.1.3. the Contract will automatically renew for successive twelve (12) month terms unless cancelled in writing by the Customer at least 30 days prior to the end of the current term renewal date. Renewal prices are subject to change. Renewal of services by the Customer indicates agreement to any Contract revisions and price changes. Renewal fees for the following term will be automatically invoiced to the Customer's account.
  - 2.2. On expiry or termination of the Contract, other than by Supplier, Supplier shall provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Customer Website from Supplier's server to that of the Customer or to that of another nominated service provider, subject to payment of all reasonable costs and expenses incurred by Supplier in doing so.

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Terms applicable to the provision of Support and Maintenance Services

**1. Support and Maintenance Services**

- 1.1. **Subscription.** Supplier shall provide the Support and Maintenance Services for the duration of the Support Term. Support and Maintenance Services can be purchased by subscription on either an annual, monthly or quarterly basis. Any subscriptions for Support and Maintenance Services will be reviewed annually by Supplier and Supplier may, in its absolute discretion, change the Fees in relation to the relevant subscription dependent on level of usage of the Support and Maintenance Services by the Customer.
- 1.2. **Notification of issues.** The Customer shall provide prompt written notice to Supplier upon becoming aware of any errors or issues with the Software with such notice providing a detailed description of the relevant errors or issues and the circumstances in which such errors or issues arose.
- 1.3. **Remedy.** Subject to **clause 1.4**, upon receipt of notification from the Customer pursuant to **clause 1.2**, Supplier shall use all commercially reasonable endeavors to remedy or correct any errors or issues within a reasonable time frame following such notification.
- 1.4. **Restrictions.** Supplier shall not be obliged to provide any Support and Maintenance Services in respect of any errors or issues in the Software which arose as a result of:
  - 1.4.1. the use of the Software not in accordance with the Documentation;
  - 1.4.2. any repair, adjustment, alteration or modification of the Software by any person other than Supplier without Supplier's prior written consent;
  - 1.4.3. the merger, in whole or in part, of the Software with any other software;
  - 1.4.4. the use of the Software by any person other than an Authorised User;
  - 1.4.5. the use of the On-Premise Software on any equipment other than the Designated Equipment;
  - 1.4.6. the failure by the Customer to implement any bug fixes, patches or other recommendations made by Supplier in respect of solutions to errors or issues in the Software previously identified by Supplier;
  - 1.4.7. the failure by the Customer to have valid and up to date anti-virus and firewall software;
  - 1.4.8. any failure of the Customer to maintain the Designated Equipment or keep the Designated Equipment in good working order;
  - 1.4.9. any failure of the Customer to maintain and / or pay for a subscription for Support and Maintenance Services;
  - 1.4.10. the Customer's failure to install and use any Updates to the Software;
  - 1.4.11. the use of the Software for a purpose for which it was not designed; and
  - 1.4.12. the use of the Software in breach of these terms and conditions and / or the relevant Contract.
- 1.5. **Additional Charges.** In the event that the errors or issues in the Software arose as a result of any of the circumstances described in **clause 1.4**, Supplier may (if requested by the Customer and at Supplier's sole discretion), provide the Support and Maintenance Services notwithstanding that the error or issue results from any of the circumstances described in **clause 1.4**. In such circumstances, Supplier shall be entitled to levy Additional Charges for the work completed.
- 1.6. **Variation to Fees.** Supplier may change subscription payment(s) for Support and Maintenance Services at any time by giving a minimum of one month's notice to the Customer in writing or if the Customer agrees to the change in subscription following additional purchases of Software from Supplier as set out in an Order Form.
- 1.7. **Rights to terminate.** Supplier reserves the right to terminate the provision of the Support and Maintenance Services at any time, at its discretion. The Supplier will provide a pro rata refund of any Fees paid in advance by the Customer for any Support and Maintenance Services not provided as at the date of termination in accordance with this **clause 1.7**.