

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Deliverables: all Documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications and training materials.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Services: the services to be provided by the Company under this Agreement as set out in Schedule 1.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Words in the singular shall include the plural and vice versa.

2. COMPANY'S OBLIGATIONS

2.1 The Company shall provide the Services, and deliver the Deliverables to the Customer, in accordance with Schedule 1.

2.2 The Company shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under clause 3.1.3.

3. CUSTOMER'S OBLIGATIONS

3.1 The Customer shall:

3.1.1 co-operate with the Company in all matters relating to the Services;

3.1.2 provide, for the Company, its agents, subcontractors, consultants and employees, access to the Customer's premises, office accommodation, data and other materials and facilities as required by the Company;

3.1.3 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;

3.2 If the Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

4. CHARGES AND PAYMENT

4.1 In consideration of the provision of the Services by the Company, the Customer shall pay the charges as set out in Schedule 1.

4.2 Unless otherwise stated in Schedule 1 prices exclude VAT, which the Company shall add to its invoices at the appropriate rate.

4.3 Invoices shall be issued as set out in Schedule 1 and the Customer shall pay each invoice in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Company.

4.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:

4.4.1 charge interest on such sum from the due date for payment until payment is made, whether before or after any judgment under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and

4.4.2 suspend all Services until payment has been made in full.

4.5 Time for payment shall be of the essence of this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 As between the Customer and the Company, all Intellectual Property Rights in the Deliverables shall be owned by the Company. Subject to due payment by the Customer, the Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services.

6. LIMITATION OF LIABILITY

6.1 This clause 6 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:

6.1.1 any breach of this Agreement;

6.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and

6.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

6.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

6.3 Nothing in this Agreement limits or excludes the liability of the Company:

6.3.1 for death or personal injury resulting from negligence; or

6.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company.

6.4 Subject to clause 6.2 and clause 6.3:

6.4.1 the Company shall not be liable for:

6.4.1.1 loss of profits; or

6.4.1.2 loss of business; or

6.4.1.3 depletion of goodwill and/or similar losses; or

6.4.1.4 loss of anticipated savings; or

- 6.4.1.5 loss of or corruption of data or information; or
- 6.4.1.6 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 6.4.2 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services.

7. DATA PROTECTION

- 7.1 The Customer warrants that personal data supplied or to be supplied by it to the Company relates only to persons who have consented to such supply;
- 7.2 The Company will only use such personal data in connection with the supply of the Services and will delete and/or correct it at the request of the Customer; and
- 7.3 The Company may transfer such data to any successor to its business or to its associated companies but subject to the restriction in clause 7.2 above

8. TERMINATION

- 8.1 Subject to clause 8.2 and clause 8.3, this Agreement shall terminate automatically on completion of the Services.
- 8.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other immediately on giving notice to the other if:
 - 8.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment; or
 - 8.2.2 the other party commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 8.2.3 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - 8.2.4 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
 - 8.2.5 the other party enters into or becomes subject to any insolvency process or proceedings.
- 8.3 On termination of this Agreement for any reason:
 - 8.3.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
 - 8.3.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

9. FORCE MAJEURE

- 9.1 A party shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**)
- 9.2 If the Force Majeure Event prevails for a continuous period of more than one month, either party may terminate this Agreement by giving written notice to the other party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

10. VARIATION

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

11. WAIVER

- 11.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.
- 11.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.

12. ENTIRE AGREEMENT

- 12.1 This Agreement and any documents referred to in it or annexed to it and initialed by the parties constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.
- 12.2 The Customer acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement. Each party agrees that the only remedies available to it arising out of or in connection with a Representation shall be for breach of contract.
- 12.3 Nothing in this clause shall limit or exclude any liability for fraud.

13. RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

14. NOTICES

All notices to be given or made hereunder shall be in writing and posted by first class post or sent by fax to the party to receive the same at the addresses or fax numbers of the parties shown in this Agreement or at such other addresses as each party may notify the other from time to time for this purpose and shall be deemed to have been delivered three days after posting in a pre-paid envelope addressed as above or upon the date of transmission as appropriate.