

Furness Media Limited Standard Terms and Conditions

Published by Furness Media
March 2023



Furness Internet | Furness io
| Furness Media

Furness Media Standard Terms and Conditions

Effective Date : **01 March** 2023

Supplier Contact: **Guy Ritch**
Furness Media

Version	Date	Description	Author
2.6.1	01 March 2023	Submission	Guy Ritch

1. Interpretation

The definitions and rules of interpretation in this Condition 1 apply in these terms and conditions (**Conditions**).

Definitions

Bespoke Software - software programs developed by the Supplier specifically for the Client.

Business Day - a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Contract – These Conditions, the Service Level Agreement (where applicable) and the Pricing Document.

Content - all text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials, but excluding the Source Code, featured, displayed or used or to be featured, displayed or used in or in relation to the Services.

Client Cause: any of the following causes:

- a. any improper use, misuse or unauthorised alteration of the Supplier Solution by the Client;
- b. any use of the Supplier Solution by the Client in a manner inconsistent with the then-current documents/instructions of the Supplier;
- c. the use by the Client of any hardware or software not provided by the Supplier or approved by the Supplier in the specification for use by the Client in connection with the Supplier Solution;
- d. the use of a non-current version or release of the Supplier Solution;
- e. use of the system via inadequate 3rd party services, infrastructure or hardware not provided or covered by the Supplier under the Contract; or
- f. failure of the Client, their supply chain, users or partners to follow policy and procedures set out by the Supplier or Client.

Client - means any individual, firm or corporate body (which expression shall, where the context so admits, include its successors and assigns) which purchases services from the Supplier.

Defect - an error in the Supported Solution that causes it to fail to operate substantially in accordance with the relevant Documentation.

Effective Date – as defined in the Service Level Agreement.

Fees – the fees as set out within the Pricing Document.

Good Industry Practice - the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a company within the relevant industry or business sector.

Intellectual Property Rights or IPR - patents, rights to inventions, copyright and related rights (including software), moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, 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.

Maintenance Activity Schedule – the Maintenance Activity Schedule appended to the Service Level Agreement.

Microsoft Cloud Services – As specified in the Pricing Document.

Mitigate: the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the vulnerability in question, which may include patching or coding changes, and the terms Mitigated and Mitigation shall be construed accordingly.

Operational Fault: failure of the Supplier Solution to operate in all material respects in accordance with the Specification, including any operational failure or error referred to in the Service Level Table (as defined in the Service Level Agreement).

Out-of-Scope Services: any services provided by the Supplier in connection with any apparent problem reasonably determined by the Supplier to have been caused by a Client Cause or a cause outside the Supplier's control.

Pricing Document – the pricing document setting out the Fees to be paid by the Client to the Supplier.

Services - means the services to be provided by the Supplier to the Client under the Contract.

Service Level Agreement – means the service level agreement (where applicable), which sets out the nature of the Services to be entered into by the parties.

Service Continuity, Monitoring & Maintenance - the maintenance activity and monitoring of the robustness of the solutions provided by the Supplier, including suitable staging, testing, process and resources provided to support changes planned to the live solutions, including backups and restore tests if defined in the Maintenance Activity Schedule.

Site - the website to be hosted by the Supplier under the Contract.

Supplier – Furness io Limited

Furness io Limited, a limited company, registered in England and Wales under Company Number 13829169, who's registered address is 136 Highgate, Kendal, Cumbria, England, LA9 4HW.

Source Code - the source code of the Supplier Solution to which it relates, in the language in which the Supplier Solution was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Client's development personnel to understand, develop and maintain that Supplier Solution.

Supplier Solution – Comprising the Supplier Standard Software, the Third-Party Software and the Bespoke Software (as applicable).

Support Request: request made by the Client in accordance with Agreement for support in relation to the Supplier Solution, including correction of an Operational Fault.

Support Services: maintenance of the then-current version or release of the Supplier Solution, including Service Desk Support, but excluding any Out-of-scope Services.

Supplier Standard Software - the software programs proprietary to the Supplier, which are to be provided to the Client without modification.

Technical Specification - the specification of the Supplier Solution as agreed between the Supplier and the Client.

Third-Party Software - any Open Source Software and any software programs proprietary to third parties, which are to be provided to the Client without modification.

Virus - anything or device (including any software, code, file or programme) which may:

- prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
- adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Visitor – a visitor to the site hosted by the Supplier.

Vulnerability - any weakness in the computational logic (for example, code) found in the Suppliers Standard Software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

- 1.1. Condition and paragraph headings shall not affect the interpretation of these conditions.
- 1.2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2. General

- 2.1. We are committed to providing you with a professional service and to give your work prompt and proper care, skill and attention.
- 2.2. We will rely on you to provide us with all information when needed to enable us to deal efficiently with your requirements.
- 2.3. It is your obligation to tell us promptly of any change in, or addition to, any information you have provided to us.
- 2.4. We will not have any obligation to verify or check the accuracy of any information you provide to us unless it is specifically agreed in writing that we should do so.
- 2.5. Unless otherwise specifically agreed in writing these Conditions shall apply to all work for which we are contracted by you.
- 2.6. By accepting any quote, proposal, or brief in writing, by email or other form of communication, you agree to these Conditions.

3. Priority of Documents

- 3.1. These Conditions shall apply to and be incorporated in the Contract.
- 3.2. If there is any conflict of interest between the Service Level Agreement (where applicable), Pricing Document and these Conditions, the order of precedence shall be:
 - 3.2.1. the Pricing Document;
 - 3.2.2. the Service Level Agreement (where applicable); and
 - 3.2.3. these Conditions.
- 3.3. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.
- 3.4. These Conditions shall prevail over any terms and conditions referred to by the Client, or contained in a purchase order, confirmation of order, specification or implied by law, trade, custom, practice or course of dealing.

4. Supplier's Obligations

- 4.1. With effect from the Effective Date the Supplier shall, in consideration of the Fees being paid in accordance with the Pricing Document, provide the Services expressly identified in the accompanying documents under these Conditions, with reasonable care and skill.
- 4.2. During the Term the Supplier shall perform the Support Services during the Support Hours in accordance with the Service Levels. As part of the Support Services, the Supplier shall:
 - 4.2.1. provide Service Desk Support by means specified via company website or specific contact methods provided in accordance with agreed service levels.
 - 4.2.2. provide technical support for the Supplier Solution in accordance with the Service Levels.
- 4.3. During the Term the Supplier shall perform the Service Continuity, Monitoring & Maintenance in accordance with Service Levels..
- 4.4. The Supplier may reasonably determine that any services are Out-of-Scope Services. If the Supplier makes any such determination, it shall promptly notify the Client of that determination.
- 4.5. The Client acknowledges that the Supplier is not obliged to provide Out-of-Scope Services.

5. Client Obligations

- 5.1. The Client shall:
 - 5.1.1. without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;
 - 5.1.2. carry out all responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 5.1.3. obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract;
 - 5.1.4. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - 5.1.5. be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet;
 - 5.1.6. provide access to the Client's systems for the purpose of carrying out diagnostics and correction of Defects, provided that system access shall be direct or remote, at the Client's option;
 - 5.1.7. ensure that they have in place policies in relation to continuity and resilience, IT acceptable use and user access. The Client shall ensure that such policies do not contradict the Supplier's policies in these areas (as brought to the Client's attention from time to time). Should the Client not have such policies in place at the Effective Date, the Client shall work

- with the Supplier to put in place such policies, and shall pay the Supplier such reasonable fees as is required to ensure implementation of such policies; and
- 5.1.8. consult with the Supplier if at any time during Term, the Client is considering any major change or update to the Client's current IT infrastructure. For the avoidance of doubt, if the Client is unclear as to whether or not a change requires consultation with the Supplier, the Client shall seek the Supplier's confirmation as soon as reasonably practicable, before carrying out the change to IT infrastructure.
- 5.2. The Client shall not except as may be allowed by any applicable law or as expressly permitted under the Contract:
- 5.2.1. during the Term, without the Supplier's prior written approval, allow any person other than a representative of the Supplier to modify, repair or maintain any part of the Supplier Solution;
- 5.2.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of Supplier Standard Software or Bespoke Software; or
- 5.2.3. access all or any part of the Services (including Supplier Standard Software or Bespoke Software) in order to build a product or service which competes with the Supplier; or
- 5.2.4. solicit or entice away, or attempt to solicit or entice away, from the employment or service of the Supplier the services of any employee of the Supplier other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier. This Condition 5.2.4 shall apply for the term of the Contract, and for a period of 12 months after termination or expiry of the Contract;
- 5.2.5. provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- 5.2.6. if the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, or failure to comply with the provisions of these Conditions, or the Client's agents, subcontractors or employees, the Client shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it, subject to the Supplier confirming such costs, charges and losses to the Client in writing. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.

6. Microsoft Cloud Services

- 6.1. Where the Services include Microsoft Cloud Services, the Client shall, in accepting these Conditions, accept the terms of the Microsoft Client Agreement (whichever version is current on the Microsoft website at the time of the sale, available at <https://www.microsoft.com/licensing/docs/customeragreement> or such other web address as replaces it from time-to-time).

7. Site Content

- 7.1. The Supplier shall, where applicable, update the Site with Content provided from time to time by the Client (or requested to be produced or procured by the Supplier, for the Client), in accordance with the frequency set out in the Pricing Document (where applicable). The parties shall ensure that any Content does not infringe any applicable laws, regulations or third party rights (such as but not limited to material, which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**). Where such Content is procured on a party's behalf, that party shall seek all necessary licences or consents or permission, or support the other party in procuring the same.

- 7.2. The Supplier shall include only the Content on the Site, which is provided by, or approved by, the Client. The Client acknowledges that the Supplier has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Supplier reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Client if it becomes aware of any allegation that content on the Site may be Inappropriate Content.
- 7.3. The Client shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the materials (including the Content) on the Site or any other material posted to, or linked to, the Site constitutes Inappropriate Content.
- 7.4. The Supplier may include the statement "Powered by " on the footer of any web delivered content, application or home page of the Site in a form to be agreed.

8. Intellectual Property Rights.

- 8.1. The Supplier acknowledges that the Client's Intellectual Property Rights existing or created prior to the date of the Contract or outside of its scope (including any Content) (**Client Background IPRs**), are and remain the exclusive property of the Client or, where applicable, the third party licensor from whom the Client derives the right to use such Intellectual Property Rights.
- 8.2. The Client acknowledges that the Supplier's Intellectual Property Rights existing or created prior to the date of the Contract or outside of its scope (including the Content and Source Code) (**Supplier Background IPRs**), are and remain the exclusive property of the Supplier or, where applicable, the third party licensor from whom the Supplier derives the right to use such Intellectual Property Rights.
- 8.3. The Client acknowledges that the Supplier's Intellectual Property Rights which are generated in provision of the Services (including the Source Code and Content created in provision of the Services), regardless of whether it was generated by one or more parties or by a third party or parties on its or their behalf respectively (**Arising IPRs**) are and remain the exclusive property of the Supplier or, where applicable, the third party licensor from whom the Supplier derives the right to use such Intellectual Property Rights.
- 8.4. The Client grants to the Supplier a non-exclusive, non-transferable, royalty-free licence (including the right to grant sub-licences to permitted subcontractors) to use the Client Background IPRs solely for the purpose of performing its obligations under the Contract.
- 8.5. The Supplier agrees, subject to payment of the Fees and any other payment due under the Contract by the Client to the Supplier, to assign all Intellectual Property Rights in the Content (but not the Source Code) to the Client, or procure the necessary licences, or sub-licences from any relevant third-party.
- 8.6. The Supplier grants to the Client a perpetual, royalty-free, world-wide, non-exclusive licence to use the Supplier Background IPRs (as far as reasonably necessary to enable the Client to benefit from the Services) and/or the Arising IPRs for the Client's business purposes. For the avoidance of doubt, the Supplier retains the right to grant licences to third parties of the Arising IPRs.

9. Intellectual Property Indemnity

- 9.1. The Client agrees to indemnify and keep indemnified the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use of the Client Background IPRs.
- 9.2. The Supplier agrees to indemnify and keep indemnified the Client against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the

Client arising out of or in connection with any claim made against the Client for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with the use of the Supplier's Intellectual Property Rights, including the Supplier Background IPRs and the Arising IPRs.

10. Data Protection

DEFINITIONS

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

- 10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor. Schedule 1 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 10.3. Without prejudice to the generality of Condition 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider and/or lawful collection of the Personal Data by the Provider on behalf of the Client for the duration and purposes of the Contract.
- 10.4. Without prejudice to the generality of Condition 10.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
 - 10.4.1. process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Client;
 - 10.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 10.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- 10.4.4. not transfer any Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
- 10.4.5. the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
- 10.4.6. the data subject has enforceable rights and effective legal remedies;
- 10.4.7. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 10.4.8. the Supplier complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- 10.4.9. assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 10.4.10. notify the Client without undue delay on becoming aware of a Personal Data Breach;
- 10.4.11. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 10.4.12. maintain complete and accurate records and information to demonstrate its compliance with this Condition 10.

11. Price.

The Client agrees to pay the Fees in accordance with the terms of payment set out in the Pricing Document.

12. Acceptance

Unless otherwise specified within the Pricing Document, acceptance of the Supplier Solution shall be deemed to have occurred on the first use of the Supplier Solution by the Client in the normal course of business (**Acceptance Date**).

13. Variation and amendments.

If, due to circumstances beyond the Supplier's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Client forthwith. The Supplier shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

14. Term and Termination.

15. The Contract shall begin on the Effective Date and shall continue for 12 months (**Initial Term**). The Contract will automatically renew for further 12 month periods at the end the Initial Term (**Term**) unless terminated earlier in accordance with Condition 15.2 or 15.3.

15.1. Without affecting any other right or remedy available to it, either party may terminate the Contract on giving not less than 3 months' written notice to the other party.

15.2. In addition to any cancellation terms specified in the Pricing Document, either party may terminate the Contract immediately if the other party:

15.2.1. is in breach of any of its obligations under the Contract; or

15.2.2. has entered liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets; or

15.2.3. has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986; or

15.2.4. the Client or Supplier ceases or threatens to cease to carry on business.

15.3. In the event of termination of Contract, the Supplier shall retain any unused sums already paid to it by the Client without prejudice to any other rights the Supplier may have whether at law or otherwise, and all sums payable by the Client to the Supplier shall be immediately payable.

16. Sub-Contracting.

The Supplier reserves the right to sub-contract the performance of any of its obligations under the Contract without the prior written consent of the Client and shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of the Client itself.

17. Warranties

17.1. The Supplier warrants and represents that the Supplier Solution at the Acceptance Date, will perform in all material respects in accordance with the Technical Specification.

17.2. The Supplier does not warrant or guarantee that it will be able to rectify all Defects.

17.3. Any unauthorised modifications, use or improper installation of the Supplier Solution by, or on behalf of, the Client shall render all the Supplier's warranties and obligations under these Conditions null and void.

17.4. The Supplier shall not be obliged to rectify any Defect if attempts to rectify such Defect and other than normal recovery or diagnostic procedures have been made by the Client's personnel or third parties without the permission of the Supplier.

17.5. Save in respect of any specific warranties given elsewhere in the Contract, the Supplier does not warrant or guarantee that the Services (including the Supplier Solution) and/or Site, when taken in whole or in part, will contain no Vulnerabilities, and it shall be the Client's sole responsibility to ensure that the Technical Specification detail all of the Client's cybersecurity requirements in sufficient detail so they can be implemented by the Supplier as part of the Services.

17.6. The Client:

17.6.1. warrants to the Supplier that it will at all times comply with all applicable laws and regulations with respect to its activities under this Contract and in connection with any part of the Supplier Solution;

17.6.2. shall take reasonable steps not to introduce any Virus or Vulnerability to the Supplier Solution, the network, information systems or Site of the Supplier;

17.6.3. shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of any non-compliance by the Client with this Condition 17.6.

17.7. Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this Contract and that those signing or accepting the Contract are duly authorised to bind the party for whom they sign or provide acceptance.

18. Liability.

18.1. Except as expressly provided in the Contract and to the fullest extent permitted by applicable law:

18.1.1. the Client shall be solely responsible, as against the Supplier, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Client, any customer of the Client or any other third party based (wholly or in part) on the results obtained from the use of the Solution or the Services by the Client;

18.1.2. the Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Client in connection with the Services; and

18.1.3. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from these Conditions.

18.2. Neither party excludes or limits liability to the other party for:

- 18.2.1. fraud or fraudulent misrepresentation;
- 18.2.2. death or personal injury caused by negligence;
- 18.2.3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 18.2.4. any matter for which it would be unlawful for the parties to exclude liability.

18.3. Subject to Clause 18.2, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- 18.3.1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- 18.3.2. any loss or corruption (whether direct or indirect) of data or information;
- 18.3.3. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- 18.3.4. any loss or liability (whether direct or indirect) under or in relation to any other contract.

18.4. Subject to Clause 18.2, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or any collateral contract shall be limited to the price paid for the Services during the 12 months preceding the date on which the claim arose or, if the claim arose during any period before 12 months had elapsed from the Effective Date, during that shorter period.

19. Force Majeure.

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate the Contract by giving 45 days' written notice to the affected party.

20. Waiver.

20.1. No waiver by the Supplier of any breach of these Terms and Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of the Contract shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which the waiver is given.

20.2. No failure or delay on the part of any party in exercising any right, power or privilege under the Contract shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

21. Severance.

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

22. Notices and Services.

22.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- 22.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 22.1.2. sent by email to the email address addresses (or an address substituted in writing by the party to be served) within the SLA:

22.2. Any notice shall be deemed to have been received:

- 22.2.1. if delivered by hand, at the time the notice is left at the proper address;
- 22.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 22.2.3. if sent by email, at the time of transmission, or, if this time falls after 5 pm in the place of receipt, when business hours resume at 9 am the next Business Day.

23. This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. Third party rights

The Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

25. Partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

26. Applicable Law and Jurisdiction

- 26.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and interpreted in accordance with the law of England and Wales.
- 26.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Processing, Personal Data and Data Subjects

1. Processing by the Provider
 - 1.1 Scope
The processing of personal data by the Supplier for the purposes of providing the Services.
 - 1.2 Nature
IT Services, Consultation, Design & Digital Marketing Services.
 - 1.3 Purpose of processing
The provision of the Services.
 - 1.4 Duration of the processing
For the period from the Commencement Date until termination of the Contract in accordance with its terms.
2. Types of Personal Data
 - Names
 - Addresses
 - Email addresses
 - Telephone numbers
 - Job titles and employer names
3. Categories of Data Subject
 - Employees of the Client and employees of its customers
 - Agents and contractors of the Client
 - Agents and contractors of the Client's customers