



Terms & Conditions - Instiller Email Marketing for Agencies

FROM THE EFFECTIVE DATE, ANY PREVIOUS AGREEMENTS BETWEEN THE CLIENT AND INSTILLER LIMITED SHALL BE SUPERSEDED AND REPLACED ENTIRELY BY THESE TERMS AND CONDITIONS.

1. INTERPRETATION

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

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

Charges: the charges payable by the Client for the supply of the Services in accordance with the Order Form and clause 8.

Client: the person or firm who purchases Services from the Supplier.

Client Data: the data inputted by the Client, authorised users, or the Supplier on the Client's behalf for the purpose of using the Services or facilitating the Client's use of the Services.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.2.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.5.

Contract: the contract between the Supplier and the Client for the supply of Services in accordance with the Order Form and these Conditions.

Data Controller: has the meaning given to that term (or to the term 'controller') in Data Protection Legislation.

Data Processor: has the meaning given to that term (or to the term 'processor') in Data Protection Legislation.

Data Protection Legislation: means any applicable law in the UK relating to the processing, privacy, and use of Personal Data, as applicable to the Supplier, the Client and/or the Services, including:

- (a) in the United Kingdom:
 - (i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing or replacing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive); and/or
 - (ii) the General Data Protection Regulation (EU) 2016/679 (GDPR), and/or any corresponding or equivalent national laws or regulations; and
- (b) any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by any relevant Supervisory Authority.

Data Subject: has the meaning given to that term in Data Protection Legislation.

Documentation: the document made available to the Client by the Supplier within the Software and online via <https://support.instiller.co.uk> or such other web address notified by the Supplier to the Client from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date described in clause 2.2.

End User: customer of the Client to whom the Client will provide access to the Services or a customer contracting with an Intermediary for the provision of the Services.

Initial Term: the initial term of the Contract as set out in the Order Form.

Intermediary: a customer of the Client who will use the Services for, or on behalf of, an End User or provide access to the Services for use by an End User.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

Optional Extras: additional services and / or features related to the Services requested by the Client as made available at [this link](#).

Optional Extras Charges: the charges payable by the Client for the supply of any requested Optional Extras.

Order: the Client's order for Services as set out in the Client's Order Form.

Order Form: the form on which the Client's Order is made, setting out the specific terms of service.

Personal Data: has the meaning given to that term in Data Protection Legislation.

Process: has the meaning given to that term in Data Protection Legislation (and related terms such as 'processing' have corresponding meanings).

Renewal Term: the period described in clause 13.1.

Services: the subscription services provided by the Supplier to the Client under these Conditions, as more particularly described in the Documentation.

Software: the third party or Supplier developed online software applications licensed by the Supplier as part of the Services in accordance with these Conditions.

Supervisory Authority: means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation.

Supplier: Instiller Limited registered in England and Wales with company number 5053657 and registered address Leofric House, Binley Road, Coventry, West Midlands, CV3 1JN.

Support Services Policy: the Supplier's policy for providing support in relation to the Services as made available at <https://support.instiller.co.uk> or such other website address as may be notified to the Client from time to time.

Term: has the meaning given in clause 13.1 (being the Initial Term together with any subsequent Renewal Terms).

Third Party Features: any features or applications that are owned by a third party which may, from time to time, form part of the Services and which at the Effective Date are set out in the Order Form.

Virus: any thing 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;



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- 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.
- 1.2. Clause headings shall not affect the interpretation of these Conditions. References to clauses are to the clauses of these Conditions.
- 1.3. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. And reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Any words following the term “including”, “include” or “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. Any such reference shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8. A reference to writing or written includes email and any other forms of digital communications but excludes fax.
- 2. BASIS OF CONTRACT**
- 2.1. The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions. The Order Form upon which the Order is made must be signed by the Client when the Order is made.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order by signing and returning the Order Form, at which point and on which date the Contract shall come into existence (**Effective Date**).
- 2.3. The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 calendar days from its date of issue.
- 3. SERVICES**
- 3.1. Subject to the Client paying for the Services in accordance with these Conditions, the Supplier hereby grants to the Client and its Intermediaries and/or End Users a non-exclusive, non-transferable, non-licensable right to use the Services and the Documentation during the Term.
- 3.2. For the avoidance of doubt, the Supplier grants to the Client and its Intermediaries and/or End Users a revocable, non-exclusive, non-transferable, non-licensable right to use the Software used in the delivery of the Services for the duration of the Term.
- 3.3. The Supplier shall, during the Term, provide the Services and make available the Documentation to the Client and its Intermediaries and/or End Users on and subject to the terms of these Conditions.
- 3.4. The Supplier shall use reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.4.1. planned maintenance carried out during the maintenance window of 4:00am to 8:00am GMT; and
- 3.4.2. unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Client at least 6 Normal Business Hours’ notice in advance.
- 3.5. The Supplier will, as part of the Services and at no additional cost to the Client, provide the Client with the Supplier’s standard support services during Normal Business Hours in accordance with the Supplier’s Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Client may purchase enhanced support services separately at the Supplier’s then current rates.
- 3.6. The Supplier may amend the Support Services Policy and/or the Third Party Features at its sole and absolute discretion from time to time. Where the Supplier proposes to make a material amendment to its Support Services Policy and/or the Third Party Features, it shall publish its proposed amendments on its website:
- 3.6.1. in the case of a material amendment to the Support Services Policy, fourteen (14) days prior to implementing such amendments; and
- 3.6.2. in the case of a material amendment to the Third Party Features, thirty (30) days prior to implementing such amendments.
- 4. CLIENT DATA**
- 4.1. All right, title and interest in and to all of the Client Data shall vest in the Client, its Intermediaries or End Users dependent on the circumstances in each case. Whosoever owns the Client Data shall have sole responsibility for its legality, reliability, integrity, accuracy and quality.
- 4.2. To the extent the Client Data includes any Personal Data, the provisions of this clause 4 shall apply.
- 4.3. The parties acknowledge and agree that:
- 4.3.1. the subject matter and details of the processing carried out under the Contract are described in **Appendix 1**;



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- 4.3.2. the Client is a Data Controller or Data Processor, as applicable, of that Personal Data under Data Protection Legislation;
- 4.3.3. the Supplier is a Data Processor of the Personal Data under Data Protection Legislation.
- 4.4. Without prejudice to the generality of clauses **6.4.2** and **7.1.3**, each party shall comply with all applicable requirements of Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under Data Protection Legislation.
- 4.5. Without prejudice to the generality of clause **4.4**, the Client shall:
- 4.5.1. ensure that it has all necessary appropriate consents and notices in place to enable the processing of the Personal Data by the Supplier for the duration and purposes of the Contract;
- 4.5.2. ensure that any Personal Data that it provides is lawfully disclosed or provided to the Supplier and the Client warrants that where the Client is a Data Processor in respect of the Personal Data, its appointment of the Supplier as another Data Processor in accordance with the Contract has been authorised by the relevant Data Controller;
- 4.5.3. not cause the Supplier to be in breach of Data Protection Legislation;
- 4.5.4. ensure that any instructions provided to the Supplier regarding the processing of Personal Data are lawful and shall, at all times, be in accordance with Data Protection Legislation;
- 4.5.5. have sole responsibility for the technical and organisational measures employed in its own environments and shall put in place any reasonable measures recommended by the Supplier in respect of the security of the Personal Data;
- 4.5.6. ensure that the Personal Data shall not include any "special categories of personal data" or "sensitive personal data", as defined in applicable Data Protection Legislation;
- 4.5.7. indemnify the Supplier for any costs, damages, penalties, awards or fines suffered or incurred by the Supplier as a result of any claim by a third party, including a Data Subject or which are imposed upon the Supplier by a Supervisory Authority in the event of any breach of this clause 4 by the Client.
- 4.6. Insofar as the Supplier processes Personal Data under the Contract, the Supplier shall:
- 4.6.1. not transfer any such Personal Data outside the European Economic Area without the Client's prior consent and provided the following conditions are fulfilled:
- (a) the Client or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 4.6.2. process such Personal Data solely for the purposes specified in the Contract strictly in accordance with the Client's written instructions unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall promptly notify the Client of this before performing the processing required by the applicable laws unless those applicable laws prohibit the Supplier from so notifying the Client;
- 4.6.3. ensure it has in place appropriate technical and organisational measures to protect against unauthorised processing or unlawful processing of Personal Data and against accidental loss 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;
- 4.6.4. ensure that all personnel who have access to and/or process the Personal Data are obliged to keep the Personal Data confidential;
- 4.6.5. assist the Client in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with Supervisory Authorities or regulators and the Supplier shall be entitled to levy an additional charge on the Client for its reasonable time and effort utilised in providing such prompt cooperation and assistance as well as any costs and expenses incurred;
- 4.6.6. maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Client and its auditors, upon reasonable request, for the purpose of demonstrating compliance by the Supplier with their obligations under this clause 4.



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- 4.7. The Supplier shall not appoint any third-party processors of the Personal Data under the Contract without first obtaining the consent of the Client.
- 4.8. On expiry or termination of the Contract, and unless otherwise directed by the Client, the Client instructs the Supplier to delete all Client Data in its possession in accordance with applicable law. The Supplier will, after a recovery period of 30 days following such expiry, comply with this instruction, unless applicable law requires the Supplier to store the Client Data.
- 5. NOTIFICATION OF SECURITY OR DATA BREACH**
- 5.1. The Supplier shall notify the Client without undue delay if it becomes aware of any actual, threatened or potential security breach that affects the Client, the Services or the Client Data.
- 5.2. As part of the notification given under clause 5.1, the Supplier shall set out:
- 5.2.1. the nature and extent of the security breach; and
- 5.2.2. any steps the Client needs to take as a result of such security breach including circulating the information provided under clause 5.2.1 to any persons on the Client's email distribution list including End Users and/or Intermediaries.
- 5.3. The Supplier's notification of or response to a security breach will not be construed as an acknowledgement by the Supplier of any fault or liability with respect to such breach.
- 6. SUPPLIER'S OBLIGATIONS**
- 6.1. The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 6.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not comply with the foregoing undertaking, the Supplier will, at its expense, use all reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier:
- 6.2.1. does not warrant that the Client's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Client's requirements; and
- 6.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Client acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3. These Conditions shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Conditions.
- 6.4. The Supplier warrants that it
- 6.4.1. has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Conditions; and
- 6.4.2. shall comply with all applicable laws and regulations with respect to its activities under these Conditions.
- 7. CLIENT'S OBLIGATIONS**
- 7.1. The Client shall:
- 7.1.1. ensure that the terms of the Order are complete and accurate;
- 7.1.2. provide the Supplier with:
- (a) all necessary co-operation in relation to any applicable Contract; and
- (b) all necessary access to such information as may be required by the Supplier, in order to provide the Services, including but not limited to Client Data, security access information and configuration services;
- 7.1.3. comply with all applicable laws and regulations with respect to its activities under any applicable Contract;
- 7.1.4. notify the Supplier immediately as soon as it becomes aware of any actual, threatened or potential security breach that affects the Services, the Supplier, the Client or the Client Data;
- 7.1.5. comply with any instructions or directions given by the Supplier in connection with an actual, threatened or potential security breach;
- 7.1.6. carry out all other Client responsibilities set out in these Conditions 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;
- 7.1.7. ensure that the Intermediaries and/or End-users, its employees, agents and authorised independent contractors use the Services and the Documentation in accordance with the terms of these Conditions and shall be responsible for any such person's breach of these Conditions;
- 7.1.8. obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under these Conditions, including without limitation the Services;
- 7.1.9. ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and



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- 7.1.10. be solely responsible for procuring and maintaining 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.
- 7.2. The Client undertakes that:
- 7.2.1. it will not allow or suffer any individual to make use of the Services and/or Documentation who is not an employee, agent or independent contractor of the Client or an Intermediary and/or End User authorised to make use of the Services and/or Documentation;
- 7.2.2. the Services and Documentation shall be password protected, with such password being kept confidential and that other reasonable measures shall be taken by the Client to ensure the security of the Services and Documentation;
- 7.2.3. it shall permit the Supplier to audit the Client's use of the Services. Such audit may be conducted no more than once every twelve months, at the Supplier's expense, and this right shall be exercised with no less than 10 Business Days' prior notice, in such a manner so as not to substantially interfere with the Client's normal conduct of business. Any audit or representative of the Supplier shall be accompanied by a director of the Client at all times whilst conducting an audit and shall comply with the confidentiality obligations of clause 10 of these Conditions in relation to any documentation reviewed as part of any audit undertaken in accordance with this clause 7.2.3;
- 7.2.4. if any of the audits referred to in clause 7.2.3 reveal that any password has been provided to any person who is not authorised to make use of the Services and/or Documentation, then without prejudice to the Supplier's other rights, the Client shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such person; and
- 7.2.5. if any of the audits referred to in clause 7.2.3 reveal that the Client has shared its account with persons who are not authorised to make use of the Services and/or Documentation, then without prejudice to the Supplier's other rights, the Supplier will be entitled to impose such additional charges on the Client as it sees fit, at all times acting reasonably.
- 7.3. The Client shall not knowingly or negligently access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 7.3.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 7.3.2. facilitates illegal activity;
- 7.3.3. depicts sexually explicit images;
- 7.3.4. promotes unlawful violence;
- 7.3.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- 7.3.6. in a manner that is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 7.4. The Client shall not:
- 7.4.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- (a) and except to the extent expressly permitted under these Conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
- (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 7.4.2. access all or any part of the Services and/or Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- 7.4.3. subject to clause 14.7, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except an End User or Intermediary, or
- 7.4.4. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 7; and
- 7.5. The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 8. CHARGES AND PAYMENT**
- 8.1. The Client shall pay the Charges and Optional Extras Charges to the Supplier for the Services and any requested Optional Extras in accordance with this clause 8, the Order Form and any Optional Extras requests made by the Client.
- 8.2. The Supplier shall invoice the Client in the frequency as set out in the Order Form under the section entitled "Payment Terms."
- 8.3. The Client shall pay each invoice submitted by the Supplier:
- 8.3.1. within 30 days of the date of the invoice; and
- 8.3.2. in full and in cleared funds via direct debit or via bank transfer to a bank account nominated in writing by the Supplier as set out on each invoice, and
- time for payment shall be of the essence of the Contract.



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- 8.4. If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
- 8.4.1. the Supplier may, without liability to the Client, disable the Client's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- 8.4.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Lloyds Bank from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.5. All amounts and fees stated or referred to in these Conditions:
- 8.5.1. shall be payable in pounds sterling;
- 8.5.2. are, subject to clause 8.4.2, non-cancellable and non-refundable;
- 8.5.3. are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.6. The Supplier shall be entitled to increase the Charges and the Optional Extras Charges once in every twelve (12) month period upon 30 days' prior notice to the Client and, subject to clause 7.1, the Order Form shall be deemed to have been amended accordingly.
- 8.7. The Client may terminate the Contract by giving written notice to the Supplier within 30 days of receiving a notification of an increase in the Charges from the Supplier in accordance with clause 8.6, such termination becoming effective upon the expiry of the Initial Term.
- 9. PROPRIETARY RIGHTS**
- 9.1. The Client acknowledges and agrees that as between the Supplier and the Client, the Supplier and/or its licensors own all intellectual property rights in the Software, the Services and the Documentation. Except as expressly stated herein, these Conditions do not grant the Client any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or the Documentation.
- 9.2. The Supplier confirms that it has all the rights in relation to the Software, the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, any applicable Contract.
- 10. CONFIDENTIALITY**
- 10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under any applicable Contract. A party's Confidential Information shall not be deemed to include information that:
- 10.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
- 10.1.2. was in the other party's lawful possession before the disclosure;
- 10.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 10.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence; or
- 10.1.5. is required to be disclosed by law, by any insurance policy maintained by the Supplier, by any court of competent jurisdiction or by any regulatory or administrative body.
- 10.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of any applicable Contract.
- 10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of any applicable Contract.
- 10.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5. The Client acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 10.6. The Supplier acknowledges that the Client Data is the Confidential Information of the Client.
- 10.7. This clause 10 shall survive termination of any applicable Contract, however arising.
- 10.8. No party shall make, or permit any person to make, any public announcement concerning any applicable Contract without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11. INDEMNITY**
- 11.1. The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
- 11.1.1. the Client's use of the Services and/or Documentation in contravention of these Conditions, provided that:
- (a) the Client is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
- (c) the Client is given sole authority to defend or settle the claim,



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- 11.2. The Supplier shall defend the Client, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims, provided that:
- 11.2.1. the Supplier is given prompt notice of any such claim;
- 11.2.2. the Client provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense;
- 11.2.3. the Client does not make any admission of liability, agreement or compromise in relation to any such claim without the prior written consent of the Supplier; and
- 11.2.4. the Supplier is given sole authority to defend or settle the claim.
- 11.3. In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 11.4. In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 11.4.1. a modification of the Services or Documentation by anyone other than the Supplier; or
- 11.4.2. the Client's use of the Services or Documentation in a manner contrary to the instructions given to the Client by the Supplier; or
- 11.4.3. the Client's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5. The foregoing and clause 11.4.2 state the Client's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- ### 12. LIMITATION OF LIABILITY
- 12.1. This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:
- 12.1.1. arising under or in connection with these Conditions;
- 12.1.2. in respect of any use made by the Client of the Services and Documentation or any part of them; and
- 12.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.
- 12.2. Except as expressly and specifically provided in these Conditions:
- 12.2.1. the Client assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Client, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction;
- 12.2.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- 12.2.3. the Services and the Documentation are provided to the Client on an "as is" basis.
- 12.3. Nothing in these Conditions excludes the liability of the Supplier:
- 12.3.1. for death or personal injury caused by the Supplier's negligence; or
- 12.3.2. for fraud or fraudulent misrepresentation.
- 12.4. Subject to clause 12.2 and clause 12.3:
- 12.4.1. the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any: loss of profits, loss of business, depletion of goodwill and/or similar losses; or loss or corruption of data or information; or pure economic loss; or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these Conditions; and
- 12.4.2. the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of any applicable Contract shall be limited to:
- (a) the total Charges and Optional Extras Charges paid by the Client under the applicable Contract during the twelve (12) months immediately preceding the date on which the claim arose; or
- (b) where the claim arises during the first twelve (12) months of the applicable Contract, the total anticipated Charges to be paid by the Client to the Supplier during the first twelve (12) months of the applicable Contract.
- ### 13. TERM AND TERMINATION
- 13.1. The Contract shall, unless otherwise terminated as provided in this clause 13, commence on the Effective Date and shall continue for the Initial Term and, thereafter, shall be automatically renewed for successive periods of twelve (12) months (each a **Renewal Term**), unless:

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- 13.1.1. either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or
- 13.1.2. otherwise terminated in accordance with the provisions of these Conditions;
- and the Initial Term together with any subsequent Renewal Terms shall constitute the **Term**.
- 13.2. Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- 13.2.1. the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than thirty (30) days after being notified in writing to make such payment;
- 13.2.2. the other party commits a material breach of any other term of these Conditions which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- 13.2.3. the other party repeatedly breaches any of the terms of these Conditions 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 these Conditions;
- 13.2.4. the other party becomes subject to any of the events listed in clause **13.3**, or the terminating party reasonably believes that the other party is about to become subject to any of them and notifies the other party accordingly.
- 13.3. For the purposes of clause **13.2.4**, the relevant events are:
- 13.3.1. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of sections 123 of the Insolvency Act 1986; or
- 13.3.2. an order is made or a resolution is passed for the winding up of the other party or the appointment of a liquidator; or
- 13.3.3. an administrator, administrative receiver or receiver is appointed, or there is an application for the appointment of any of the above or for an administration order, in respect of the whole or any part of the other party's assets or business; or
- 13.3.4. the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- 13.4. On termination of the Contract for any reason:
- 13.4.1. all licences granted under these Conditions shall immediately terminate;
- 13.4.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 13.4.3. unless otherwise directed by the Client, the Client instructs the Supplier to delete all Client Data in its possession in accordance with clause **4.8**; and
- 13.4.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of these Conditions which existed at or before the date of termination shall not be affected or prejudiced.
- ## 14. MISCELLANEOUS MATTERS
- 14.1. **Force Majeure:** The Supplier shall have no liability to the Client under these Conditions if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, acts of God, changes to law or regulations, embargoes, war, terrorist acts, riots, fires, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, unusually severe weather conditions, Virus, tool software design loophole, hacking attack and/or other acts of hackers or third-party internet service providers.
- 14.2. **Variation:** These Conditions may change at any time and any changes shall be effective upon 30 days' prior notice to the Client subject to clause **14.10**. Continued use of the Services after such changes indicates your acceptance of those changes and agreement to abide by them
- 14.3. **Waiver:** No failure or delay by a party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.4. **Rights and remedies:** Except as expressly provided in these Conditions, the rights and remedies provided under these Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.5. **Severance:** If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.6. **Entire agreement:** These Conditions, the Order Form and any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

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- 14.7. **Assignment:** The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions.

The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions.

- 14.8. **No partnership or agency:** Nothing in these Conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

- 14.9. **Third party rights:** These Conditions do not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 14.10. **Notices:** Any notice or communication required to be given under these Conditions shall be sent to the email address specified on the Order Form (or, if no such email address is provided, the primary contact email addresses provided by the Client to the Supplier for the purposes of communication and billing). A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender or the time displayed on the email).

This clause 14.10 does not apply to the service of any proceedings or other documents in any legal action.

- 14.11. **Governing Law & Jurisdiction:** These Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

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 these Conditions or their subject matter or formation (including non-contractual disputes or claims).



APPENDIX 1

Subject Matter and Details of the Data Processing

Subject Matter

The Supplier's provision of the Services to the Client.

Duration of the processing

The Term plus the period from the expiry of the Term until deletion of the Client Data by the Supplier in accordance with the Contract.

Nature and purpose of the processing

The Supplier will process Client Data for the purposes of providing the Services to the Client in accordance with the Contract.

Categories of data

Data relating to individuals provided to the Supplier via the Services, by (or at the direction of) the Client, Intermediaries or End Users excluding special categories of data.

Data Subjects

Data subjects include the individuals about whom data is provided to the Supplier via the Services by (or at the direction of) the Client, Intermediaries or End Users.