



Terms of Business

Enigma Marketing Services Ltd (Also referred to as Enigma/Enigma Group)

1. INTERPRETATION

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

Contract: any contract entered into between the Customer and Enigma incorporating the terms of this agreement.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Customer's Manager: the Customer's manager, appointed in accordance with clause 5.1.

Data Protection Laws: the data protection and privacy law that applies to the processing of personal data, including the Data Protection Directive 95/46/EC and the Data Protection Act 1998, the Privacy and Electronic Communications Regulations 2003 or such updated or replacement legislation as implemented from time to time including the General Data Protection Regulation (EU) 2016/679.

Deliverables: all Documents, products and materials developed by Enigma or its agents, subcontractors, consultants and employees in relation to the Services in any form, including the deliverables specified in the Project Plan.

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.

Enigma's Equipment: any equipment, including tools or systems, provided by Enigma or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Enigma's Manager: Enigma's manager for the Services appointed under clause 4.3.

Input Material: all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications the input materials specified in the Project Plan.

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.

Order: the document signed by the Customer confirming the Services to be provided and the charges to be paid by the Customer.

Personal Data: any personal data defined in the Data Protection Laws processed by either party as a result of, or in connection with the performance of its obligations under this agreement.

Pre-existing Materials: all Documents, information and materials provided by Enigma relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications or the pre-existing materials specified in the Project Plan.

Project Milestones: a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

Project Plan: the detailed plan describing the Services and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Services agreed in accordance with clause 3.

Services: the services to be provided by Enigma under this agreement as set out in the Project Plan together with any other services which Enigma provides or agrees to provide to the Customer.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

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) [and that person's legal and personal representatives, successors and permitted assigns].



- 1.4 The schedules [and background] form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules [and background].
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to writing or written includes faxes but not e-mail.
- 1.8 Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement.

2. COMMENCEMENT AND DURATION

- 2.1 Enigma shall provide the Services to the Customer on the terms and conditions of this agreement.
- 2.2 Enigma shall provide the Services to the Customer from the date specified in the Project Plan.
- 2.3 The Services supplied under this agreement shall continue to be supplied until the Project Plan is completed, unless this agreement is terminated in accordance with clause 12.

3. PROJECT PLAN

- 3.1 The Project Plan shall be agreed by the parties in the following manner:
- (a) the Customer shall provide Enigma with a request for a Project Plan, setting out the requirements and specifications of the services which it is requesting from Enigma, including a description of what work is to be done, dates by which it or each stage of the work is requested to be started and finished, Deliverables, Input Materials, and such other information as Enigma may request to allow Enigma to prepare a draft Project Plan;
- (b) Enigma shall, as soon as reasonably practicable, provide the Customer with a draft Project Plan; and
- (c) Enigma and the Customer shall discuss and agree the draft Project Plan and when it has been agreed, they shall both sign a copy of it and it shall become subject to this agreement.
- 3.2 Once the Project Plan has been agreed and signed in accordance with clause 3.1(c), no amendment shall be made to it except in accordance with clause 6 and clause 14.

4. ENIGMA'S OBLIGATIONS

- 4.1 Enigma shall use all reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Project Plan in all material respects.
- 4.2 Enigma shall use all reasonable endeavours to meet Project Milestones specified in the Project Plan.
- 4.3 Enigma shall appoint Enigma's Manager who shall have authority contractually to bind Enigma on all matters relating to the Services. Enigma shall use reasonable endeavours to ensure that the same person acts as Enigma's Manager throughout the term of this agreement, but may replace him from time to time where reasonably necessary in the interests of Enigma's business.
- 4.4 Enigma shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 5.1(e), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

5. CUSTOMER'S OBLIGATIONS

- 5.1 The Customer shall:



- (a) co-operate with Enigma in all matters relating to the Services and appoint a Customer's Manager;
 - (b) provide, for Enigma, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Enigma;
 - (c) provide, in a timely manner, such Input Material and other information as Enigma may reasonably require, and ensure that it is accurate in all material respects;
 - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
 - (e) inform Enigma of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
 - (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
 - (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of Enigma's Equipment, the use of Input Material and the use of the Customer's Equipment in relation to Enigma's Equipment, in all cases before the date on which the Services are to start;
 - (h) keep, maintain and insure Enigma's Equipment in accordance with Enigma's instructions as notified by Enigma's Manager from time to time and shall not dispose of or use Enigma's Equipment other than in accordance with Enigma's written instructions or authorisation.
- 5.2 If Enigma'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, Enigma 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.
- 5.3 The Customer shall not, at any time from the date of this agreement to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from Enigma or employ or attempt to employ any person who is, or has been, engaged as an employee of Enigma in the provision of the Services.

6. CHANGE CONTROL

- 6.1 The Customer's Manager and Enigma's Manager shall, at least once every month discuss matters relating to the Services. If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, Enigma shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any necessary variations to Enigma's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on this agreement.
- 6.3 If the Customer wishes Enigma to proceed with the change, Enigma has no obligation to do so unless and until the parties have agreed the necessary variations to its charges, the Services, the relevant Project Plan and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 14.
- 6.4 Notwithstanding clause 6.3, Enigma may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

7. CHARGES AND PAYMENT

- 7.1 In consideration of the provision of the Services by Enigma, the Customer shall pay the charges as set out in the Order.
- 7.2 The charges excludes:
- (a) subject to Customer approval, the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Enigma engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by Enigma for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Enigma at cost; and



- (b) VAT, which Enigma shall add to its invoices at the appropriate rate.
- 7.3 The parties agree that Enigma may review and increase charges, provided that such charges cannot be increased more than once in any 12-month period. Enigma shall give the Customer written notice of any such increase 3 months before the proposed date of that increase. If such increase is not acceptable to the Customer, it may, within 1 month of such notice being received or deemed to have been received in accordance with clause 21, terminate the agreement by giving 3 months' written notice to Enigma.
- 7.4 The Customer shall pay each undisputed invoice submitted to it by Enigma, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by Enigma. Disputed invoices shall be resolved pursuant to clause 22.
- 7.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Enigma on the due date, Enigma may:
 - (a) charge interest on such sum from the due date for payment at the annual rate of 1.5% above the from time to time Bank of England base rate, accruing on a daily basis until payment is made, whether before or after any judgment; and
 - (b) suspend all Services until payment has been made in full.
- 7.6 All undisputed sums payable to Enigma under this agreement shall become due immediately on its termination, despite any other provision. This clause 7.6 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.
- 7.7 A party may, without prejudice to any other rights it may have, set off any liability owed to it by the other party against any liability it owes to that party.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between the Customer and Enigma, all Intellectual Property Rights and all other rights in the Deliverables (unless otherwise agreed in writing in the Project Plan or Order) and the Pre-existing Materials shall be owned by Enigma. Subject to clause 8.2, Enigma licenses all such rights to the Customer free of charge and on a perpetual, non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If Enigma terminates this agreement under clause 12.2, this licence will automatically terminate.
- 8.2 The Customer acknowledges that, where Enigma does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on Enigma obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Enigma to license such rights to the Customer.

9. CONFIDENTIALITY AND PARTIES' PROPERTY

- 9.1 Both parties shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it, its employees, agents, consultants or subcontractors and any other confidential information concerning either party's business or its products which the other may obtain.
- 9.2 Either party may disclose such information:
 - (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out its obligations under this agreement; and
 - (b) as may be required by law, court order or any governmental or regulatory authority.
- 9.3 Both parties shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 9.
- 9.4 Neither party shall use any such information for any purpose other than to perform its obligations under this agreement.
- 9.5 All materials, equipment and tools, drawings, specifications and data supplied by a party to the other (including Pre-existing Materials, Customer's Equipment and Enigma's Equipment) shall, at all times, be and remain as between Enigma and the Customer the exclusive property of the providing party, but shall be held by the receiving in safe custody at its own risk and maintained and kept in good condition until returned to the providing party, and shall not be disposed of or used other than in accordance with the providing party's written instructions or authorization.



10. LIMITATION OF LIABILITY

- 10.1 This clause 10 sets out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the other party in respect of (a) any breach of this agreement; (b) any use made by the Customer of the Services, the Deliverables or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 10.3 Nothing in this agreement limits or excludes the liability of either party for (a) for death or personal injury resulting from negligence; or (b) for any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other party; or (c) for any liability incurred by the Customer as a result of any breach by Enigma of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 10.4 Subject to clause 10.2 and clause 10.3:
- (a) Neither party shall be liable for (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill and/or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss of corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - (b) Either party'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.

11. DATA PROTECTION

- 11.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Enigma [in connection with the Services.
- 11.2 As part of the Service(s) the Customer may transfer Personal Data to Enigma for processing on the Customer's behalf. It is the joint intention of the parties that the Customer will be the data controller and Enigma will be the data processor and Enigma shall:
- (a) process the Personal Data only on behalf of the Customer (or, if so directed by the Customer, or any of the members of the Customer's Group);
 - (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by the Customer;
 - (c) take steps to ensure the reliability of any of Enigma's personnel who have access to the Personal Data;
 - (d) obtain the Customer's prior written consent before transferring the Personal Data to any subcontractors except where the transfer is to another member of Enigma's Group;
 - (e) ensure that only those of Enigma's personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of the Services and all of Enigma's personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations of this provision;
 - (f) not to publish, disclose or divulge any of the Personal Data to any third party unless directed to do so in writing by the Customer; and
 - (g) not to transfer Personal Data outside the European Economic Area (EEA) without the prior written consent of the Customer.
- 11.3 The Customer shall seek all necessary consents and approvals to ensure that the Customer is entitled to transfer the relevant Personal Data to Enigma so as to allow Enigma and any other member of Enigma Group or any Subcontractor to lawfully process the Personal Data on the Customer's behalf. In addition, with respect to data subjects for which it is the data controller, the Customer shall be responsible for ensuring that the processing of the Personal Data complies with Data Protection Laws. Failure by the Customer to comply with this Clause 11.3 resulting in a data security breach shall remain the sole liability of the Customer and Enigma shall not be liable for any losses, penalties or damages caused by such failure. The Customer agrees that it will (in addition to, and without affecting, any other rights or remedies that Enigma may have whether under



statute, common law or otherwise) indemnify and hold harmless Enigma, on demand from and against all claims, liabilities, costs, expenses, loss or damage incurred by Enigma (including consequential losses, loss of profit and loss of reputation and all interest, penalties and legal and other professional costs and expenses) arising directly or indirectly from a breach of this Clause 11.3 by the Customer or enforcement of any rights under it.

- 11.4 Enigma and any other relevant member of Enigma Group will process Personal Data only in accordance with the terms of this agreement and/or the applicable Contract and any reasonable instructions given by the Customer from time to time. Enigma shall enter into a data protection addendum and such other documents reasonably as required by the Customer in order to comply with the General Data Protection Regulations 2016/679,
- 11.5 Enigma and any other relevant members of Enigma Group and the Customer will take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or accidental loss or destruction of, or damage to, the Personal Data so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage in relation to the personal data and the nature of the personal data to be protected.
- 11.6 Except to the extent that the Customer has specifically agreed in the applicable Contract to perform the following matters, Enigma as part of the Services is solely responsible for managing and safeguarding its data by taking sufficient backup copies, encryption and/or password protection of its data and through any other means appropriate including (without limitation) maintaining up to date anti-virus software. Enigma shall also maintain a disaster recovery process in relation to such data. Save where expressly stated to the contrary, the Customer shall not be responsible for any loss or corruption of data arising as a result of the provision of the Services by Enigma.
- 11.7 Enigma reserves the right (at Enigma's sole discretion):
- to suspend access to the Services if at any time if there is (or Enigma reasonably believes that there has been or is likely to be) a breach of security; and
 - to ask the Customer to (in which case, the Customer shall) change any or all of the passwords the Customer uses in connection with the Services with prior reasonable notice to the Customer.
- 11.8 Except as expressly set out to the contrary in the applicable Contract, Enigma and the Customer shall, at all times, be jointly responsible for:
- preventing unauthorised use of the Services; and
 - maintaining the security of all systems owned or used by the Customer for the storage or transfer of any Personal Data to Enigma and Enigma's Equipment within its (or its employees', agents' or contractors') control.
- 11.9 Enigma shall not be responsible for charges resulting from fraudulent and/or unauthorised use of the Services by the Customer or any third parties and the Customer agrees to pay all charges related to such fraudulent and/or unauthorised use provided Enigma has taken all necessary steps and put in place all necessary security procedures to combat fraudulent and/or unauthorised use have been taken.
- 11.10 Enigma in relation to fraudulent and/or unauthorised use by the Customer or third parties (or the prevention of such use) will notify the Customer immediately and take all necessary steps to mitigate the incident(s) and no liability can be accepted by Enigma for any loss sustained by the Customer to the extent resulting from fraudulent and/or unauthorised use that are beyond Enigma's reasonable control (save for any fraud and/or unauthorised use by an employee of Enigma acting in that capacity) provided that Enigma has taken all steps necessary to prevent such an occurrence or a similar occurrence.
- 11.11 Enigma shall not be liable to the Customer for any and all costs, losses, damages, expenses (including reasonable professional adviser's costs and disbursements and reasonably legal costs and disbursements) arising from or incurred by reason of any breach by Enigma of its obligations under this Clause 11 where the breach has been caused by a third party and out of Enigma's reasonable control.

12. TERMINATION

- 12.1 Subject to clause 12.4, this agreement shall terminate upon either party giving the other one month's notice in accordance with clause 21.
- 12.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than 3 months' written notice if:



- (a) 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 30 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the 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
- (c) 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
- (d) 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
- (e) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party]; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party]; or
- (g) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
- (h) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(d) to clause 12.2(j) (inclusive); or
- (i) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (j) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

12.3 On termination of this agreement for any reason:

- (a) the Customer shall immediately pay to Enigma all of Enigma's outstanding and undisputed unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Enigma may submit an invoice, which, unless disputed, shall be payable within 30 days of receipt;
- (b) the Customer shall, within a reasonable time, return all of Enigma's Equipment, Pre-existing Materials and Deliverables.. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) 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.

12.4 On termination of this agreement (however arising) the following clauses shall survive and continue in full force and effect: (a) clause 8; (b) clause 9; (c) clause 10; (d) clause 12; and (e) clause 23.

13. FORCE MAJEURE

13.1 A party, provided that it has complied with the provisions of clause 13.3, shall not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and, subject to clause 13.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (Force Majeure Event), including but not limited to any of the following:

- (a) acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
- (b) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) terrorist attack, civil war, civil commotion or riots;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) compliance with any law;
- (f) fire, explosion or accidental damage;
- (g) loss at sea;
- (h) extreme adverse weather conditions;



- (i) collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - (j) any labour dispute, including but not limited to strikes, industrial action or lockouts.
- 13.2 Any party that is subject to a Force Majeure Event shall not be in breach of this agreement provided that:
- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - (c) it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 13.3 If the Force Majeure Event prevails for a continuous period of more than 3 months, either party may terminate this agreement by giving 30 days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. 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.

14. VARIATION

Subject to clause 3 and clause 6, no variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15. WAIVER

- 15.1 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.
- 15.2 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.
- 15.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.
- 15.4 A party that waives a right or remedy provided under this agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 15.5 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision of this agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.2 If a provision of this agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



17. ENTIRE AGREEMENT

- 17.1 This agreement and any documents referred to in it constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement. In the event of any conflict between any of these documents, the following order of precedence shall apply: (i) the Project Plan; then (ii) the Order; then (iii) this agreement.
- 17.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it, 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 or those documents. 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 as expressly provided in this agreement.
- 17.3 Nothing in this clause shall limit or exclude any liability for fraud.

18. ASSIGNMENT

- 18.1 Neither party shall, without the prior written consent of the other (not to be unreasonably withheld, delayed or conditioned), assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement.
- 18.2 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.

19. NO PARTNERSHIP OR AGENCY

Nothing in this agreement 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).

20. 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.

21. NOTICES

- 21.1 A notice or other communication given to a party under or in connection with this agreement:
- (a) shall be in writing in English (or accompanied by a properly prepared translation into English);
 - (b) shall be signed by or on behalf of the party giving it;
 - (c) shall be sent for the attention of the person, at the address specified in this clause (or to such other address, or person as that party may notify to the other, in accordance with the provisions of this clause); and
 - (d) shall be:
 - (i) delivered personally; or
 - (ii) sent by commercial courier; or
 - (iii) sent by pre-paid first-class post or recorded delivery; or
 - (iv) sent by airmail requiring signature on delivery.
- 21.2 The addresses for service of a notice are as set out in the Project Plan.
- 21.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- (a) if delivered personally, at the time of delivery; or
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt; or
 - (c) if sent by pre-paid first-class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or



(d) if sent by airmail, five days from the date of posting.

21.4 For the purposes of this clause:

(a) all times are to be read as local time in the place of deemed receipt; and

(b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.

21.5 To prove delivery, it is sufficient to prove that:

(a)

(b) if sent by pre-paid first class post, the envelope containing the notice was properly addressed and posted.

21.6 The provisions of this clause 21 shall not apply to the service of any process in any legal action or proceedings.

21.7 A notice required to be given under or in connection with this agreement shall not be validly served if sent by e-mail.

22. DISPUTE RESOLUTION

22.1 If any dispute arises in connection with this agreement, Enigma’s Manager and the Customer’s Manager shall, within 30 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

22.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (ADR notice) to the other party requesting a mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

22.3 The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

23. GOVERNING LAW AND JURISDICTION

23.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

Signed for and on behalf of: Enigma	Signed for and on behalf of: Customer
Signed:.....	Signed:.....
Name:	Name:
Title:	Title:
Date:	Date:



SCHEDULE OF ADDITIONAL TERMS FOR WEBSITE AND SOFTWARE DEVELOPMENT SERVICES

BROWSER SUPPORT & TESTING CHARGES

Enigma's Software is compatible with standard browsers and will be supported in respect of the following:

- Desktop: Internet Explorer 11+ (including Edge)
- Desktop: Chrome 66.0+
- Desktop: Safari 11.1+
- Desktop: Firefox 60+
- Mobile: iOS Safari (Current stable)
- Mobile: Android Browser (Current stable)

Please Note: Current stable releases are the auto update versions which have high usage, particularly with Chrome which has supported auto updates for some time now. Enigma's Software is also likely to achieve compatibility with other browsers due to adherence to web standards but they are not supported by Enigma.

HOSTING

All websites created by Enigma for each Customer require hosting for such websites to function.

Please note that hosting is not included for any web projects Enigma provide quotes for unless otherwise expressly stated. Hosting services are an additional cost.

Hosting charges depend on a variety of factors such as costs, performance, scale and scope of hosting required, concurrency, traffic, access, security & data protection requirements. Enigma will advise on the charges payable as appropriate.

Related sundries e.g. Web Fonts, SSL Certificates and licensing for any commercial services, plugins or analytics tools are also not included unless expressly stated on a quote or statement of work.

MAINTENANCE FOR SOFTWARE

Enigma provides support for its Software developed for Customers with a Warranty Period of 12 (12) months from completion or delivery of all Software. During this period after delivery (defined as a deployment of which the Customer will be notified), any bugs or issues reported by the Customer will be fixed free of charge only if they are accepted by Enigma as bugs namely that Enigma will investigate the issue and the reported matter is clearly identified as defective software as opposed to user error or a misunderstanding over the scope of the Software. The time and resources incurred by Enigma to remedy any issues reported after expiry of the Warranty Period will be charged to the Customer irrespective of whether is a bug or a feature.

enigma

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