

DATED

OPTIMISA RESEARCH LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

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THIS AGREEMENT is dated on the date appearing on the front page.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

Bribery Act: means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time.

Contract: the Client's purchase order and the Supplier's acceptance of it, or the Client's acceptance of a quotation for Services by the Supplier under condition 2.2.

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

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

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, graph, diagram, design, picture, photograph, film, negative or other image, tape, disk or other device or record embodying information in any form.

Employment Liabilities: any and all costs claims demands fines expenses (including reasonable legal and other professional expenses) payments wages actions proceedings compensation awards interest loss damages or penalties incurred or arising in each case out of the application of the TUPE Transfer Regulations including any liabilities for any income tax to be collected through the Pay As You Earn scheme and any primary and secondary National Insurance Contributions.

In-put Material: all Documents, information and materials provided by the Client relating to the Services.

Intellectual Property Rights: all patents, copyright and related rights, trade marks, service marks, business and domain names, rights in goodwill, rights in designs, rights in computer software, database right, 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.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract.

Services: the services to be provided by the Supplier under the Contract as set out in Schedule 1 together with any other services which the Supplier provides, or agrees to provide, to the Client.

Supplier: Optimisa Research Limited.

TUPE Transfer Regulations: The Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended or replaced from time to time.

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

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of the Contract.
- 1.5 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.
- 1.6 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.7 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to conditions and schedules are to the conditions and schedules of the Contract.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

2.1.1 apply to and be incorporated into the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Client, or implied by law, trade custom, practice or course of dealing.

2.2 The Client's purchase order, or the Client's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Client to purchase the Services specified in it on these Conditions. No offer placed by the Client shall be accepted by the Supplier other than:

2.2.1 by a written acknowledgement issued and executed by the Supplier; or

2.2.2 (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

3. COMMENCEMENT AND DURATION

The Services supplied under the Contract shall be provided by the Supplier to the Client on or during the date or dates specified in Schedule 1.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance in all material respects with Schedule 1.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in Schedule 1 but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 4.3 The Supplier shall not commit any offence under the Bribery Act 2010 and shall have an anti-bribery policy which prevents Staff from committing prohibited acts.

5. CLIENT'S OBLIGATIONS

- 5.1 The Client shall:
 - 5.1.1 co-operate with the Supplier in all matters relating to the Services;
 - 5.1.2 provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
 - 5.1.3 provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may reasonably require and ensure that it is accurate in all material respects;
- 5.2 The client shall not commit any offence under the Bribery Act 2010 and shall have an anti-bribery policy which prevents Staff from committing any prohibited acts.
- 5.3 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 5.4 The Client shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- 5.5 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Client paying to the Supplier a sum equivalent to 30% of the annual remuneration of the Supplier's employee, consultant or subcontractor.

6. CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the charges as set out in Schedule 2 in accordance with the payment terms set out in Schedule 2.
- 6.2 The charges set out in Schedule 2 exclude:
 - 6.2.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier 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 the Supplier for the supply of the Services.

Such expenses, materials and third party services shall be invoiced by the Supplier;
and

- 6.2.2 VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 6.3 The Client shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 6.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Supplier on the due date, the Supplier may:
 - 6.4.1 charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - 6.4.2 suspend all Services until payment has been made in full.
- 6.5 Time for payment shall be of the essence of the Contract.
- 6.6 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.7 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 As between the Client and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to condition 7.2, the Supplier licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. This licence is revocable.
- 7.2 The Client acknowledges that, where the Supplier does not own any Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Client.

8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- 8.1 The Client 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 the Client by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Client may obtain.
- 8.2 The Client may disclose such information:
 - 8.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract; and

- 8.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Client shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.
- 8.4 The Client shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Client shall, at all times, be and remain as between the Supplier and the Client the exclusive property of the Supplier, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

9. LIMITATION OF LIABILITY - THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 9.1 This condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of:
 - 9.1.1 any breach of the Contract;
 - 9.1.2 any use made by the Client of the Services, the Deliverables or any part of them; and
 - 9.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
 - 9.3.1 for death or personal injury resulting from negligence; or
 - 9.3.2 for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Supplier.
- 9.4 The Supplier'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 the Contract shall be limited to the price paid for the Services.

10. EMPLOYEES – TUPE TRANSFER REGULATIONS

- 10.1 The TUPE Transfer Regulations may apply in circumstances where the Supplier has taken over the provision of services similar to services previously carried out by the Client or a third party on its behalf.
- 10.2 The Client shall be liable for and shall indemnify the Supplier in respect of any and all Employment Liabilities that may be incurred by the Supplier by virtue of the TUPE Transfer Regulations and as a result of the employment or termination of employment of each of the transferring employees from the date of the relevant transfer.

11. DATA PROTECTION

The Client acknowledges and agrees that details of the Client'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 the Supplier.

12. TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

12.1.1 the other party commits a material breach of any of the terms of the Contract 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

12.1.2 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

12.1.3 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

12.1.4 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

12.1.5 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or

12.1.6 a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or

12.1.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or

12.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or

12.1.9 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 condition 12.1.2 to condition 12.1.8 (inclusive); or

- 12.1.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - 12.1.11 there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 12.2 On termination of the Contract for any reason:
- 12.2.1 the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt. This invoice will include:
 - (a) the external costs which have been incurred, or committed to which cannot be reasonably avoided at the date of termination.
 - (b) all time cost incurred in relation to the Project plus 50% of the remaining time costs proposed.
 - 12.2.2 the Client shall, within a reasonable time, return all of the Pre-existing Materials and Deliverables. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
 - 12.2.3 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.
- 12.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:
- 12.3.1 Condition 7;
 - 12.3.2 Condition 8;
 - 12.3.3 Condition 9;
 - 12.3.4 Condition 12; and
 - 12.3.5 Condition 22.

13. FORCE MAJEURE

The Supplier shall have no liability to the Client under the Contract 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) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, disease, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14. VARIATION

- 14.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.
- 14.2 Subject to condition 14.1, no variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15. WAIVER

- 15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision of the Contract (or part of any provision) 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 the Contract (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, and, to the greatest extent possible, achieves the parties' original commercial intention.

17. ENTIRE AGREEMENT

- 17.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 17.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty which is not expressly provided in the Contract.
- 17.3 Nothing in this condition shall limit or exclude any liability for fraud.

18. ASSIGNMENT

- 18.1 The Client shall not, without the prior written consent of the Supplier, assign or transfer or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 The Supplier may at any time assign or transfer or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 18.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

19. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

20. RIGHTS OF THIRD PARTIES

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

21. NOTICES

21.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in Schedule 3, or as otherwise specified by the relevant party by notice in writing to the other party.

21.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in Schedule 3 or, if sent by pre-paid first-class post or recorded delivery, at 10.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.3 This condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action.

21.4 A notice required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

22. GOVERNING LAW AND JURISDICTION

22.1 The Contract, and any dispute or claim arising out of or in connection with it or its 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.

22.2 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, the Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 - Services

This Schedule 1 may contain an express description of the Services to be provided under the Contract including details of the commencement date and the duration of those Services.

Where such details are not expressly set out in this Schedule 1 then those details shall be as set out in correspondence between the Supplier and the Client and such correspondence shall be deemed incorporated into and shall form part of the Contract.

To the extent that there is any inconsistency between the contents of these Conditions (including this Schedule 1) and the correspondence between the Supplier and the Client then the contents of these Conditions shall prevail.

Schedule 2 – Pricing and Payment

This Schedule 2 may contain express details of the agreed price to be paid for the Services together with details of the agreed date(s) and amount(s) of payment.

Where such details are not expressly set out in this Schedule 2 then those details shall be as set out in correspondence between the Supplier and the Client and such correspondence shall be deemed incorporated into and shall form part of the Contract.

To the extent that there is any inconsistency between the contents of these Conditions (including this Schedule 2) and the correspondence between the Supplier and the Client then the contents of these Conditions shall prevail.

Part 1. Price

Part 2. Payment

Schedule 3 - Notices

Notices to the Supplier:

FAO: []
Optimisa Research Limited
Pinnacle
67 Albion Street
Leeds
LS1 5AA

Notices to the Client:

[FAO:]