



General Terms and Conditions for the Supply of Digital Services

Version 1.1

April 2010



Remarkable Group Limited - Terms and Conditions for the Supply of Services

1 Definitions and Interpretation

In these terms and conditions the following words and phrases will, unless the context otherwise requires, have the following meanings:

Acceptance	means the acceptance or deemed acceptance of a Deliverable by the Customer pursuant to clause 5.9
Acceptance Tests	means the tests to be carried out on any Deliverable pursuant to clause 5 and as further described in the Proposal;
Associated Company	means any subsidiary or holding company, or subsidiary of a holding company (as subsidiary and holding company are defined in section 1159 Companies Act 2006, as amended);
Confidential Information	means all information of Remarkable or the Customer (as the case may be), whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties) where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure but excluding any information: (a) which is publicly known or becomes publicly known other than by a breach of these Terms or any other duty of confidentiality; (b) which, when it was first disclosed to the other party, was already known by that party and that party was at the time of disclosure free to disclose; or (c) which, after being disclosed to the other party by Remarkable or the Customer (as the case may be), was disclosed to that party again by a third party at liberty to disclose it without restriction;
Confirmation	means the written acceptance of the Customer's request by Remarkable, sent to the Customer, in accordance with clause 2.3;
Content	means all text, graphics, logos, photographs, images, moving images, sound, illustrations, and other materials featured, displayed or used or to be featured, displayed or used in or in relation to the Services;
Contract	means the contract constituted by Remarkable sending a Confirmation to the Customer and incorporating the Confirmation and the Proposal, together with these Terms;
Customer	means a person who enters into a Contract with Remarkable in accordance with clause 2.3;
Customer Content	means Content provided by the Customer;
Data Protection Legislation	means all applicable data protection legislation and regulations;
Deliverable	means an asset to be delivered as part of the Services other than Content including a website, intranet, extranet, application or game to be developed by Remarkable for the Customer in accordance with a Proposal;
Deliverable Design	means the graphical and visual design of a Deliverable as described in the relevant Proposal;
Intellectual Property Rights	means any rights in or to any patent, copyright, database right, design right, utility model, trade mark, brand name, service mark, trade name, business name, chip topography right, moral right, know how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including all rights to apply for any of the foregoing rights;
Personal Data	means data that are subject to protection under Data Protection Legislation;
Proposal	means the proposal for the provision of Services to the Customer prepared by Remarkable;
Remarkable	Remarkable Group Limited, a company incorporated in England and Wales with registered number 3096503, whose registered office is The Pump House, Garnier Road, Winchester, Hampshire, SO23 9QG, (VAT number: 730233380);

Remarkable Content means Content provided by Remarkable;

Remarkable Software means the source code and compiled code in a computer program developed by Remarkable and comprised in a Deliverable;

Services means the services specified in the relevant Proposal which may include strategic consultancy, digital creative services, including online media, PR, email marketing, viral marketing and seeding, the development of a Deliverable, website maintenance and hosting;

Source Code means the source code of the Remarkable Software and all technical information and documentation required to enable the Customer to modify the Remarkable software;

Start Date means the date of the Confirmation;

Terms mean these terms and conditions;

Third Party Content means Content provided by a third party;

Third Party Software means any computer program comprised in a Deliverable that is provided by a third party; and

Web Pages means the web pages, if applicable, of a Deliverable containing the Content described in the Proposal.

In these Terms, unless the context otherwise requires:

- (a) references to a party mean Remarkable or the Customer as the case may be;
- (b) references to any statute, statutory provision or statutory instrument or order include:
 - i. references to that statute, statutory provision or statutory instrument or order as from time to time amended, extended, consolidated or re-enacted; and
 - ii. all rules, regulations, statutory instruments or orders made under them, as from time to time amended, extended, consolidated or re-enacted;
- (c) words importing a gender will include all genders;
- (d) the clause headings are for convenience of reference only and will not affect the construction or interpretation of these Terms;
- (e) references to any person include references to any human being, company, body corporate, association, joint venture, partnership, trust and any legal entity capable of suing and being sued;
- (f) references to the singular will include the plural;
- (g) "including" will be understood to mean "including without limitation" and "includes" and "include" will be understood similarly; and
- (h) in the case of conflict or ambiguity between any these Terms and any provision of a Proposal the provisions of the Proposal will take precedence.

2 Contract for provision of services

- 2.1 Subject to any variation under clause 2.2, the Contract shall comprise the Confirmation, the Proposal and these Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 These Terms apply to the provision of all of Remarkable's Services under the Contract and any variation to these Terms and any representations about the Services shall have no effect unless expressly agreed in writing and signed by a director of Remarkable.
- 2.3 The Customer's approval in writing (including by email) of a Proposal, constitutes an offer by the Customer to purchase the Services specified in the Proposal on these Terms. No offer placed by the Customer shall be accepted by Remarkable other than by a Confirmation issued and executed by Remarkable, at which time a Contract for the supply of the Services on these Terms will be established.
- 2.4 The Contract will take effect from the Start Date and will, subject to clause 13, continue for the term specified in the Proposal. If no such term is specified in the Proposal, then the Contract will continue until 23:59 hours on the date 90 days after the date of completion of the last Deliverable by Remarkable.



3 Remarkable's Obligations

- 3.1 Remarkable will use reasonable care and skill to provide the Services to the Customer from the Start Date.
- 3.2 Remarkable will use reasonable endeavours to provide the Services and, where relevant, deliver the Deliverables to the Customer and, subject to clause 9.1, in accordance in all material respects with the Proposal.
- 3.3 Remarkable will use reasonable endeavours to adhere to the provisions of any timetable included in the Proposal but any such timetable shall provide estimates only and time shall not be of the essence for performance of the Services.

4 Customer's Obligations

- 4.1 The Customer will:
 - (a) co-operate with Remarkable in all matters relating to the Services;
 - (b) provide all such information, data and material, including any Customer Content, as Remarkable may request, in a timely manner, in order to assist Remarkable to provide the Services or otherwise perform its obligations under the Proposal and ensure that it is accurate and complete in all material respects in order for Remarkable to be able to perform its obligations;
 - (c) where relevant, provide Remarkable, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, and other facilities as required by Remarkable for the provision of the Services and be responsible for preparing and maintaining the relevant premises for the supply of the Services; and
 - (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of Customer Content, in all cases before the date on which the Services are to start.
- 4.2 The Customer shall be liable to pay to Remarkable, on demand, all reasonable costs, charges or losses sustained or incurred by Remarkable (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Remarkable confirming such costs, charges and losses to the Customer in writing.

5 Development of Deliverables

- 5.1 Where the Proposal requires the completion of a Deliverable, Remarkable will develop the Deliverable, including to the extent applicable the development of the Remarkable Software, the Third Party Software, the Deliverable Design, the Web Pages and any Remarkable Content in accordance with the Proposal.
- 5.2 It is the responsibility of the Customer to ensure that it has the right to use the Customer Content or Third Party Content requested by the Customer and any specification it provides to Remarkable and that it is not in breach of any applicable law or regulation.
- 5.3 When Remarkable considers that the Deliverable is substantially complete, Remarkable will so notify the Customer and if Acceptance Tests are not required by the Proposal, will deliver the Deliverable to the Customer by such method as agreed between the parties.
- 5.4 If a date by which a Deliverable is to be delivered is agreed between the parties, as part of a Proposal or otherwise, (a "Delivery Date"), where applicable, the Customer shall, at its own expense, prepare the location at which the Deliverable is to be used as specified in the Proposal (the "Site") in accordance with the information provided by Remarkable in advance of each Delivery Date. On completion of such preparation, Remarkable shall inspect the Site and specify, within a reasonable time prior to the Delivery Date, any corrections or modifications required.
- 5.5 If the delivery of a Deliverable is delayed at the request of, or because of the acts or omissions of, the Customer, the Proposal shall be amended to take account of such delay in accordance with clause 5.6. If Remarkable can demonstrate that the delay has resulted in an increase in cost to Remarkable of carrying out its obligations under this Contract, Remarkable may at its sole discretion increase the charges in the Proposal by an amount not exceeding any such demonstrable cost. Remarkable may invoice the Customer for any additional monies that become payable in this way, within 30 days of demonstrating the increase in costs.
- 5.6 If a delay occurs in accordance with clause 5.5, Remarkable shall give written notice to the Customer not later than seven days after the beginning of the event causing delay. Such notice shall specify the event relied on. The parties shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Proposal shall be deemed amended accordingly.

- 5.7 The Delivery Date is intended to be an estimate and time for delivery shall not be made of the essence by notice.
- 5.8 If no date is specified for delivery of the Deliverables, delivery shall be within a reasonable time.
- 5.9 If Acceptance Tests are required:
 - (a) no later than 30 days from the Start Date, the Customer shall deliver to Remarkable proposed user acceptance criteria and test data for Acceptance Tests specific to the Deliverable. These criteria and data shall be such as are reasonably required to show that the Deliverable complies with the Proposal. Remarkable shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request and at Remarkable's standard charge out rates then in force. The parties shall use best endeavours to agree the Acceptance Tests for the Deliverable within 10 days from the date of delivery to Remarkable of the proposed acceptance criteria and test data;
 - (b) until completion of the Acceptance Tests, the Customer will not use, and will not allow any other person to use, the applicable Deliverable for any purposes other than for the Acceptance Tests;
 - (c) Remarkable will perform the Acceptance Tests in the manner agreed. Remarkable will notify the Customer when the Acceptance Tests have been passed and provide the results of the Acceptance Tests to the Customer in writing. Further details of any Acceptance Tests are set out in the Proposal;
 - (d) Remarkable will use reasonable efforts to complete the Acceptance Tests as soon as reasonably possible and within any period specified in the Proposal;
 - (e) Acceptance of Remarkable Software shall be deemed to have occurred on whichever is the earliest of:
 - i. the signing by the Customer of a certificate confirming the passing of the Acceptance Tests; or
 - ii. the expiry of five days after the notification has been given by Remarkable, in accordance with clause 5.9(c), that the Acceptance Tests have been passed, unless the Customer has given written notice in the meantime in accordance with clause 16 that the Deliverable does not conform with the Proposal; or
 - iii. the Customer uses any part of the Deliverable for any revenue-earning purposes or to provide any services to third parties other than for Acceptance Test purposes; or
 - iv. the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which Remarkable is ready to commence running such Acceptance Tests or any retests;
 - (f) if any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Remarkable has no responsibility (Non-Remarkable Defect), the Deliverable shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Remarkable Defect. Remarkable shall provide assistance reasonably requested by the Customer in remedying any Non-Remarkable Defect by supplying additional services or products. The Customer shall pay Remarkable in full for all such additional services and products at Remarkable's then current fees and prices; and;
 - (g) On Acceptance, Remarkable will make the Deliverable available to the Customer for use in a live environment.

6 Licence

- 6.1 Subject to the Customer's compliance with the requirements of clause 8, Remarkable grants, from the Start Date, a non-exclusive, royalty free licence to the Customer for the full period of the copyright in the Remarkable Software to use the Remarkable Software in accordance with these Terms.
- 6.2 Subject to clause 7, use of the Remarkable Software shall be restricted to use of the Remarkable Software in object code form for the normal business purposes of the Customer as identified in the Proposal.
- 6.3 The Customer may not use the Remarkable Software other than as specified in clause 6.2 without the prior written consent of Remarkable and the Customer acknowledges that additional fees may be payable on any change of use approved by Remarkable. For the avoidance of doubt, the Customer may not copy, develop, modify, make error corrections to or adapt the Remarkable Software otherwise than as identified in the Proposal without the prior written consent of Remarkable.
 - (a) The Customer may make back-up copies of the Remarkable Software as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Remarkable Software and take steps to prevent unauthorised copying.



- (b) Third Party Software will be supplied to the Customer by Remarkable in accordance with the relevant licensor's standard terms and the Customer agrees to be bound by such terms.
- (c) Except as expressly permitted by these Terms or, subject to clause 6.3(d), as permitted by law, the Customer has no right (and shall not permit any third party) to reverse engineer, decompile or disassemble the Remarkable Software in whole or in part.
- (d) The Customer shall only be entitled to rely upon the exception in clause 6.3(c) in respect of permission by law where it has, in the first instance, requested that Remarkable carry out such action or provide the necessary information for a reasonable commercial fee and within a reasonable period and Remarkable has confirmed that it is not prepared to do so.

6.4 For the purposes of ensuring that the Customer is complying with the terms of this licence, the Customer shall permit Remarkable to inspect and have access to any premises, and to the computer equipment located there, at or on which the Remarkable Software is being kept or used, and any records kept pursuant to this licence, provided that Reasonable provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

7 Escrow

- 7.1 If applicable and required, Remarkable shall, if the Customer so requests, provide to the Customer an escrow arrangement for the Source Code, so far as it is able, at the Customer's expense.
- 7.2 Subject to the terms of the remainder of this clause 7.2, Remarkable hereby grants to the Customer a perpetual, non-transferable and non-exclusive licence to use, reproduce, modify, adapt and enhance (and to authorise a third party to use, reproduce, modify, adapt and enhance) the Source Code and object code versions of the Remarkable Software. The licence in this clause 7.2 shall only become effective if the Customer becomes entitled to obtain access to the Source Code pursuant to the source code escrow arrangement referred to in clause 7.1 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Remarkable Software provided that such restrictions shall not detract from the rights granted hereunder.

8 Charges

- 8.1 In consideration of the provision of the Services by Remarkable, the Customer will pay the amounts specified in the Proposal (subject to any variations identified under clause 8.2), in full and in cleared funds, within 30 days of the date of the relevant VAT invoice. All such amounts are (unless otherwise stated) expressed exclusive of any applicable value added tax (VAT) and all other taxes and duties, which will be paid by the Customer.
- 8.2 Unless provided to the contrary in the Proposal, the charges in the Proposal will apply for one year following the Start Date and thereafter the applicable charges will be as set out in Remarkable's then current rate card.
- 8.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Remarkable on the due date (pursuant to clause 8.1), Remarkable may:
 - (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of NatWest Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. Remarkable may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.
- 8.4 Time for payment will be of the essence of the Contract.
- 8.5 All sums payable to Remarkable under the Contract shall become due immediately on its termination, despite any other provision. This clause 8.5 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 8.6 Remarkable may, without prejudice to any other rights it may have, set off any liability of the Customer to Remarkable against any liability of Remarkable to the Customer.
- 8.7 The Customer will reimburse all expenses reasonably incurred by Remarkable in performing the Services subject to the provision of valid VAT invoices.

9 Warranties and Limits of Liability

- 9.1 Remarkable warrants that the Remarkable Software comprised in each Deliverable will conform in all material respects to the Proposal for a period of 90 days from delivery or, if Acceptance Tests are required, the date of Acceptance (Warranty Period). If, within the Warranty Period, the Customer notifies Remarkable in writing

of any defect or fault in the Remarkable Software in consequence of which it fails to conform in all material respects to the Proposal, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Remarkable Software or used it in breach of the Proposal or these Terms, for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Remarkable, Remarkable will, at Remarkable's option, do one of the following:

9.1.1 repair the Remarkable Software; or

9.1.2 replace the Remarkable Software;

provided the Customer provides all information reasonably required by Remarkable to resolve the defect or fault, including sufficient information to enable Remarkable to re-create the defect or fault.

- 9.2 After the expiry of the Warranty Period, any repairs to the Remarkable Software carried out by Remarkable will be chargeable at the contracted hourly rate as per the Proposal, subject to clause 8.2.
- 9.3 Remarkable does not warrant that the use of the Remarkable Software or the Third Party Software will be uninterrupted or error-free.
- 9.4 The Customer acknowledges and accepts that Remarkable have developed the Proposal to reflect the specific requirements of the Customer (as identified to Remarkable by the Customer) and that Remarkable have relied upon the accuracy of the Customer's information in detailing the composition of any Deliverable. Accordingly, any implied or express representation that any Remarkable Software will be fit to operate in conjunction with any hardware or software products other than those hardware items and software products that are identified in the Proposal as being compatible with the Deliverable is hereby excluded.
- 9.5 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Terms, whether by statute, common law or otherwise, are excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.
- 9.6 Each of the parties will use reasonable commercial efforts to ensure that it does not introduce any virus or other element designed to disrupt the orderly operation of, or impair the integrity of computer programs and systems into the other's computer programs and/or systems.
- 9.7 If Remarkable's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees, Remarkable will not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 9.8 The Customer indemnifies Remarkable against all costs, claims, demands and expenses (including legal fees) arising directly or indirectly out of any claim against Remarkable by any third party arising in respect of:
 - (a) any Remarkable Content, Third Party Content requested by the Customer or Deliverable produced to a specification provided by the Customer; or
 - (b) any Customer Content in whatever format and, in particular, in relation to all damages, losses and expenses arising from any action or claim that the Customer Content or any other material posted to, or linked to the Web Pages delivered or hosted by Remarkable infringes any applicable laws, regulations or third party rights; or
 - (c) any breach by the Customer of these Terms.
- 9.9 Where the Services include hosting of Web Pages, Remarkable will include only Customer Content on the Web Pages. The Customer acknowledges that Remarkable has no control over any content placed on the Web Pages by visitors and does not purport to monitor the content of the Web Pages. Remarkable reserves the right to remove content from the Web Pages, which comes to its attention, where it reasonably suspects such content infringes any applicable laws, regulations or third party rights. Remarkable shall notify the Customer promptly if it becomes aware of any allegation that any content on the Web Pages infringes any applicable laws, regulations or third party rights.
- 9.10 Except as expressly stated in clause 9.11:
 - (b) Remarkable will have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
 - i. special damage even though Remarkable was aware of the circumstances in which such special damage could arise;
 - ii. loss of profits;



- iii. loss of anticipated savings;
 - iv. loss of business opportunity;
 - v. loss of goodwill; or
 - vi. loss of data;
- (c) the total liability of Remarkable, whether in contract, tort (including negligence) or otherwise and whether in connection with a Proposal, these Terms or otherwise, will in no circumstances exceed a sum equal to the amounts payable to Remarkable under the Proposal in the 12 months immediately following the Start Date; and
- (d) the Customer agrees that, in entering into the Contract, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Contract or (if it did rely on any representations, whether written or oral, not expressly set out in these Terms) that it will have no remedy in respect of such representations and (in either case) Remarkable will have no liability otherwise than pursuant to these Terms.

9.11 The exclusions in clause 9.10 shall apply to the fullest extent permissible at law, but Remarkable does not exclude liability for death or personal injury caused by the negligence of Remarkable, its officers, employees, contractors or agents; for fraud or fraudulent misrepresentation; for breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982; or for any other liability which may not be excluded by law.

9.12 Remarkable will not be liable for any claim arising under these Terms unless the Customer gives Remarkable written notice of the claim within 6 months of becoming aware of the circumstances giving rise to the claim or, if earlier, 6 months from the time the Customer ought reasonably to have become aware of such circumstances.

9.13 The parties acknowledge that, having regard to all the circumstances, the provisions of this clause 9 are fair and reasonable to protect the legitimate interests of the parties.

10 Confidentiality

- 10.1 Neither party may disclose to any other person the details of a Contract, contents of a Proposal or use or disclose any of the Confidential Information of the other except:
- (a) when required to do so by law or any regulatory authority; or
 - (b) to its (or any of its parent companies) employees, contractors, directors, agents or advisers whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person is informed of the obligations of confidentiality under these Terms and complies with those obligations as if they were bound by them.

11 Intellectual Property Rights

- 11.1 Subject to the Customer's compliance with these Terms and, in particular, the requirements of clause 8, and insofar as it is able, Remarkable assigns all rights, title and interest (including all Intellectual Property Rights) that it holds in the Deliverable Design, the Web Pages and any Remarkable Content (but excluding Remarkable Software, Third Party Software and any Third Party Content) to the Customer with full title guarantee.
- 11.2 Remarkable acknowledges that all Intellectual Property Rights in the Customer Content and any modification to it belong and will belong to the Customer, and Remarkable will have no rights in or to the Customer Content other than the right to use it in accordance with these Terms.
- 11.3 The Customer acknowledges that all Intellectual Property Rights in the Remarkable Software and any adaptation, development or modification of or to it belong and will belong to Remarkable unless otherwise agreed by the parties, and the Customer will have no rights in or to the Remarkable Software other than the right to use it in accordance with these Terms.
- 11.4 The Customer acknowledges that all Intellectual Property Rights in the Third Party Software and Third Party Content requested by Remarkable and any adaptation, development or modification of or to it belong and will belong to the relevant licensor, and the Customer will have no rights in or to the Third Party Software other than the right to use it in accordance with these Terms.
- 11.5 Remarkable will at its own expense defend the Customer or, at Remarkable's option, settle any claim or action brought against the Customer alleging that the possession, use, development, modification or maintenance of the Remarkable Software (or any part thereof) in accordance with these Terms infringes the Intellectual Property Rights of a third party (Infringement Claim) and will be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such

Infringement Claim. This clause 11.5 will not apply where the Infringement Claim in question:

- (a) relates to Remarkable Software produced to a specification provided by the Customer; or
- (b) is in respect of Customer Content; or
- (c) is attributable to possession, use, development, modification or maintenance of the Remarkable Software (or any part thereof) by the Customer other than in accordance with the Proposal or these Terms.

11.6 Clause 11.5 is conditional on:

- (a) the Customer notifying Remarkable in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
- (b) the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of Remarkable, which consent will not be unreasonably withheld or delayed; and
- (c) Remarkable having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving Remarkable all reasonable assistance in connection with those negotiations and such litigation at Remarkable's request and expense.

11.7 If any Infringement Claim is made, or in Remarkable's reasonable opinion is likely to be made, against the Customer, Remarkable may at its sole option and expense:

- (a) procure for the Customer the right to continue using the Remarkable Software (or any part thereof) in accordance with these Terms; or
- (b) modify the Remarkable Software so that it ceases to be infringing; or
- (c) replace the Remarkable Software with non-infringing software; or
- (d) terminate the Contract immediately by notice in writing to the Customer and refund any of the charges paid by the Customer with respect to the applicable Deliverable as at the date of termination (less a reasonable sum in respect of the Customer's use of the Remarkable Software to the date of termination) on return of the Remarkable Software and all copies thereof;

provided that if Remarkable modifies or replaces the Remarkable Software, the modified or replacement software must comply with the warranties contained in clause 9.1 and the Customer will have the same rights in respect thereof as it would have had under those clauses had the references to the date of these Terms been references to the date on which such modification or replacement was made.

12 Employees

- 12.1 The Customer will not and will ensure that none of its Associated Companies will engage at any time during the term of the Contract, and for a period of 12 months following its termination, any employee who was employed by Remarkable to provide the Services, whether as employee, consultant or independent contractor or in any other capacity without the prior written consent of Remarkable. If the Customer breaches this clause it will pay to Remarkable a sum by way of compensation equivalent to the then current annual salary of the relevant employee.

13 Termination

- 13.1 Either party may terminate the Contract by serving not less than 3 months' written notice on the other, expiring on any anniversary of the Start Date.
- 13.2 Either party may terminate the Contract immediately by serving written notice on the other if:
- (a) the other commits any material breach of these Terms which, if capable of remedy, is not remedied within 30 days of notice from that party specifying the breach and requiring its remedy; or
 - (b) the other goes into liquidation (including, for the avoidance of doubt, a voluntary liquidation); or
 - (c) the other 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 section 123 or 268 of the Insolvency Act 1986 or otherwise; or
 - (d) 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



- (e) the other has a statutory demand served, a petition filed, a notice given, a resolution passed, or an order made, for or in connection with the winding up or bankruptcy of it; or
 - (f) a creditor or encumbrancer of the other 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
 - (g) the other is the subject of an application made to court for an administration order or if a notice of intention to appoint an administrator is filed or if an administrator is appointed over it; or
 - (h) the other allows a floating charge holder over its assets to become entitled to appoint or appoint an administrative receiver; or
 - (i) the other allows a person to become entitled to appoint a receiver over its assets or allow a receiver to be appointed over its assets; or
 - (j) any event occurs, or proceeding is taken, with respect to the other in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(b) to clause 13.2(i) (inclusive); or
 - (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 13.3 The provisions of Clauses 6, 9, 10, 11, 12, 15, 16 and 17 will survive the termination of these Terms and continue in full force and effect.

14 Data

- 14.1 The Customer shall, in sufficient time to permit Remarkable to meet all its obligations under the Contract, give Remarkable access to all Customer data that is to be processed as part of the Services.
- 14.2 Remarkable shall use reasonable efforts to ensure the accurate processing of such Customer data, but gives no warranties as to the completeness or accuracy of such processing.
- 14.3 The Customer shall be responsible for checking the accuracy and completeness of the processed data and shall promptly give sufficient details to Remarkable of any inaccuracies or omissions in order to permit Remarkable to correct such inaccuracy or omission.
- 14.4 If such data includes Personal Data, Remarkable agrees:
- (a) to use and/or hold such Personal Data only as strictly necessary for the purposes of the data processing;
 - (b) not to modify, amend or alter the contents of such Personal Data other than as strictly necessary for the purposes of data processing;
 - (c) not to disclose or permit the disclosure of any such Personal Data to any third party unless specifically authorised in writing by the Customer;
 - (d) to take all reasonable steps to safeguard such Personal Data;
 - (e) to comply in all respects with Data Protection Legislation;
 - (f) not to do anything, nor permit anything to be done, which might jeopardise or contravene the terms of any data protection registration of the Customer; and
 - (g) to return all copies of such Personal Data to the Customer on completion of the data processing.
- 14.5 The Customer shall be responsible for informing Remarkable of the requirements of the Data Protection Legislation in respect of any such Personal Data and of all the Customer's contractual obligations relating to such Personal Data.

15 Transfer or Assignment

Neither party may assign or sub-license any of its rights under these Terms without the prior written consent of the other except as provided in these Terms.

16 Notices

- 16.1 All notices from one party to another under these Terms will be in writing, signed by a duly authorised person, and sent for the attention of the person specified in the Proposal (or as otherwise specified by the relevant party by notice in writing to the other party).
- 16.2 A notice will be deemed to have been received, if delivered personally, at the time of delivery when left at the address and for the contact referred to in the Proposal, or if served by first class post, or recorded delivery 48 hours after posting to an address in the UK or within 96 hours otherwise.

17 Severability

If any provision or part of these Terms is held by any court to be invalid, unenforceable or illegal to any extent then it will be severed from the rest of these Terms so that it is ineffective to the extent that it is invalid or unenforceable and the remaining provisions or part of these Terms will remain in full force and effect. If a provision of these Terms (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.

18 Waiver

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and the waiver by either party of any default or breach of these Terms will not constitute a waiver of any other or subsequent default or breach.

19 Whole agreement

The Contract constitutes the entire agreement between the parties in connection with the subject matter of the Proposal, and supersedes all prior oral and written agreements, understandings and correspondence. Each party acknowledges that it has not relied on or been induced to enter into the Contract by a representation other than those expressly set out in this Contract.

20 Amendment

- 20.1 Remarkable may amend these Terms from time to time and any Proposal will be subject to the Terms last provided to the Customer by Remarkable prior to the time the relevant Customer offer is accepted by Remarkable in accordance with clause 2.3.
- 20.2 A Proposal may be amended only by an agreement in writing signed by Remarkable and the Customer.

21 Publicity

Each party may state in its publicity and marketing materials that the other is a provider or customer (as the case may be) of information services of the type described in these Terms.

22 Force majeure

Remarkable shall have no liability to the Customer 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: act of God, governmental act, war, terrorism, fire, flood or other natural disaster, explosion or civil commotion, failure in information technology or telecommunications services, failure of a third party (including failure to supply data) and industrial action.

23 Third party rights

Any person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce the Contract.

24 Dispute Resolution

- 24.1 The parties shall use their best endeavours to negotiate in good faith and settle amicably any dispute arising out of or in connection with the Contract (referred to in this clause 24 as the "Dispute").
- 24.2 Where the Dispute cannot be settled amicably through ordinary negotiations between the duly authorised representatives of each party within fourteen (14) days of it arising, the Dispute shall in the first instance, at the request of either party and without prejudice to any other accrued rights, liabilities and other remedies of either party, be referred for mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure (10th Edition), the costs of CEDR to be shared equally by the parties unless determined otherwise as part of the mediation process.

25 Governing law and jurisdiction

The Contract and any Dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and interpreted in accordance with English Law and where any Dispute cannot be resolved in accordance with the terms of clause 24, the parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England.