

TERMS AND CONDITIONS OF SUPPLY - SERVICES

1 PURPOSE AND UNDERSTANDING

- 1.1 These Terms and Conditions (Conditions) shall apply as between the Company and the Client in respect of the Services provided under the Contract.
- 1.2 A number of words are used in these Conditions which have special meanings. Where this is the case the relevant words as defined begin with a capital letter. The meanings of these specially defined words and other guides to understanding these Conditions can be found at the end of these Conditions.

2 SERVICES

- 2.1 The Client pursuant to the Contract engages the Company to provide the Services to the Client and the Company agrees to provide the Services for the Term subject to these Conditions with reasonable care and skill.
- 2.2 All proposals made, quotations given, instructions accepted and contracts entered into by the Company with any person for the supply of the Services are subject to these Conditions to the exclusion of any other terms and conditions subject to which the Contract is accepted or purported to be accepted by the Client. Any changes or additions to the Services or these Conditions must be agreed in writing by the Company.
- 2.3 Unless otherwise agreed by the parties in writing, the Client shall at its own expense supply the Company with all necessary Documents or other materials, and all necessary data or other information relating to the Services, within sufficient time to enable the Company to provide the Services in accordance with the Contract and the Conditions. The Client shall ensure the accuracy of all Client Material and clarity of any instructions.
- 2.4 The Services shall in so far as is reasonably practicable be provided in accordance with the specification (if any) but subject to these Conditions and shall be performed at such times as the Company shall in its sole discretion decide and during its normal business hours (08.30 to 16.00 Monday to Friday) excluding United Kingdom public holidays.
- 2.5 The Company may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.
- 2.6 The Client shall afford to the Company all reasonable co-operation in all matters relating to the performance of the Company's obligations under the Contract. In particular but without limitation to this Clause, the Client shall:
 - 2.6.1 promptly and fully respond to all communications of the Company relating to the provision of the Services and ensure (if applicable) that appropriate and suitably qualified members of the Client's staff are at all reasonable times available to liaise with the Company on matters relevant to the provision of the Services;

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- 2.6.2 obtain or assist the Company to obtain at the Client's cost all necessary licences and consents required or reasonably necessary to enable the Company to properly and lawfully provide the Services to the Client;
 - 2.6.3 provide proper and clear instructions to the Company in respect of its requirements in relation to the Services, the Additional Services or in connection with the Contract;
 - 2.6.4 pay all Charges promptly when due and if not paid on the due date to pay such applicable default interest at the specified rate from time to time in force.
- 2.7 The Company may elect to suspend the provision of Services if the Client is in breach of the provisions of the Contract and these Conditions and may at its entire discretion first serve notice of its intention to suspend provision of the Services and allow the Client seven (7) days to remedy such breach failing which the Services shall be suspended upon notice without prejudice to the payment obligations and liability of the Client.

3 CHARGES AND PAYMENT

- 3.1 The Company's Charges for the relevant Services are due and payable as specified in the Contract or any Charges Sheet and will be made promptly in GBP pounds sterling.
- 3.2 All Charges and sums quoted (unless otherwise specified) are exclusive of any VAT, for which the Client shall be additionally liable at the applicable rate from time to time.
- 3.3 If the Charges are not paid by the due dates, interest shall accrue on the unpaid portion of the Charges at the rate of 4 per cent per annum above the base rate from time to time of NatWest Bank plc in accordance with the terms of the Late Payment of Commercial Debts (Interest) Act 1998. If any payments remain outstanding for 60 (sixty) days or more, the Client's access to the Services may be suspended. The Client agrees to pay all fees incurred by the Company in collecting outstanding Charges or sums.
- 3.4 Subject to any special terms agreed in writing by the parties, the Client shall pay the Charges and any expenses together with such additional sums which are agreed between the Company and the Client for the provision of the Services and any Additional Services or which, in the Company's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Client Material or any other cause attributable to the Client.
- 3.5 In the absence of agreement, the Company's standard charges and rates shall apply. The Company shall be entitled to vary its standard Charges from time to time by giving not less than fourteen (14) days' written notice to the Client.
- 3.6 Upon receipt by the Company of an instruction or request for certain services, the Company may prepare an estimate for approval. Following approval by the Client of such estimate, an invoice will be sent to the Client for 20% of the total estimated costs (exclusive of postage) for professional services, materials, agency mark up etc. as shown in the approved budget (if any). Payment of this invoice shall be due within

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thirty (30) days of the date of invoice. A reconciliation and final invoice (where relevant) will be prepared, including a summary of fees and expense invoices. Payment of such reconciliation invoice shall be due within thirty (30) days of invoice date.

- 3.7 The Client shall reimburse the Company for all out of pocket expenses, travel costs and expenses, operating costs, and disbursements incurred by it in connection with the Services.

4 AUTHORISATION AND MATERIALS

- 4.1 The property, copyright and any other intellectual property rights in any Client Material shall belong to the Client.

- 4.2 The property, copyright and any other intellectual property rights in any the Company Material shall belong to the Company, subject only to the right of the Client to use the Company Material during the Term.

- 4.3 The Client represents to the Company and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, information or other copyright work provided to the Company for the Services are owned exclusively by the Client, or that the Client has permission from the rightful owner to use such material, and will indemnify the Company and its sub-contractors from any claim, liability or suit arising from the use of such elements or materials furnished by the Client.

- 4.4 The Client confirms and authorises the Company to access and use the Client's data, database and materials in respect of the project and provision of the Services. The Client shall indemnify the Company on a full indemnity basis against any loss, damages, costs, expenses or other claims arising from any infringement resulting from use of the information supplied.

- 4.5 The Client warrants that any Client Material and its use by the Company for the purpose of providing the Services will not infringe the copyright or other rights of any third party. The Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.

5 DATA PROTECTION

The Client is responsible for ensuring that any "Personal Data" (as defined by the Act) it supplies to the Company has been collected within the terms of the Data Protection Act 1998. The Company agrees to process the data in accordance with lawful and reasonable written instructions provided by the Client. In any event should the Company require updated or refreshed or additional Personal Data from the Client it shall not be acquired without the permission of the Client and will not be held for any longer than the performance of remedies or necessary task take to perform.

6 COMPLETION AND ACCEPTANCE

- 6.1 The Company and the Client will work together to complete the relevant project in a timely manner. The Company agrees to work expediently to

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provide the Services on the agreed terms and no later than the agreed date in respect of the Contract. The parties shall agree the relevant sign off and acceptance for the Services in accordance with the Company's standard procedures.

- 6.2 The Client shall be deemed to have accepted the work in relation to the project and/or Services if they have not been rejected on or before the seventh (7th) day after completion (where applicable).
- 6.3 Time shall not be of the essence in respect of the provision of Services notwithstanding any provision to the contrary.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The tangible work product specifically produced by the Company for the Client (including the business and marketing plan, creative designs, and copy or artwork, mechanical art, illustrations, photographs, letters, brochures, mailing packages and advertisements), shall be the sole property of the Company. The Company shall supply a License to use the tangible work product under Company's standard terms of License.
- 7.2 Save as otherwise provided, any intellectual property in any Client database shall belong to the Client, and the intellectual property in any software, specifications, material, procedures, data or intellectual property of the Company used in the preparation of or which is embedded within the material produced by the Company shall remain the property of the Company.
- 7.3 All confidential information, copyright works, database rights, toolsets, inventions and patent rights and all other intellectual property rights subsisting at the commencement of the Services and which may be utilised by either party in the course of performing the Services or the project shall remain the property of the originating party.
- 7.4 Notwithstanding any provision to the contrary, nothing in these Conditions or in relation to any project or the provision of Services shall deprive the Company or grant the Client rights to any of the Company's research, know-how functionality or methodology document, supplementary knowledge and design or technology process including as used by the Company in its general business or for its database management business.
- 7.5 In the event that new inventions, designs or processes evolve in performance of the Services or as a result of the Contract, the Client acknowledges that the same shall be the property of the Company unless otherwise agreed in writing by the Company.

8 LIMITATION OF LIABILITY

- 8.1 The entire liability of the Company to the Client under or in connection with the Contract and these Conditions (whether in respect of the provision of the Services, damages, breach, indemnity or otherwise) shall not in any circumstance exceed the amount of the Charges paid by the Client to the Company for the provision of the Services over the period of the past 12 months or since the anniversary of the agreement which ever is the lesser.
- 8.2 The Company shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Client

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Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or any other fault of the Client.

- 8.3 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Client by reason of any representation (unless fraudulent), or any term or any duty for any loss of anticipated savings, business revenues, or profits (whether categorised as direct or indirect) or any indirect, special or consequential loss, loss of goodwill, data and all other such loss (whether or not arising in the normal course of business), or other economic loss or other claims however caused under the Contract or the provision of the Services.
- 8.4 The Client agrees and acknowledges that the allocation of risk in this clause is fair and reasonable in the circumstances having been taken into account by the Company in setting the level of Charges and agreeing the extent of Services.

9 TERM AND TERMINATION

- 9.1 The Term of the Contract shall be as specified in the Contract by the parties.
- 9.2 In the event that the Client elects to terminate any project or Services prior to completion, the Client agrees to pay the Company for any properly incurred expenses associated with the project or such Services that were incurred by or on behalf of the Company subject to any agreed specified limits in the budget and the balance of any remaining fees for the contracted period.
- 9.3 The Contract may be terminated:
- 9.3.1 by either party immediately if the other commits any material breach of any term of these Conditions and which (in the case of a breach capable of being remedied) shall not have been remedied by the Client within thirty (30) days of a written request to remedy the same or by the Company within sixty (60) days of a written request to remedy the same;
- 9.3.2 forthwith by the Company upon notice if the Client fails to make payment of any sums due or Charges pursuant to the Contract or Services on the due date;
- 9.3.3 forthwith by either party if the other shall convene a meeting of its creditors (or be made bankrupt, if an individual) or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented (and not discharged within [fourteen] ([14]) days) or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

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- 9.3.4 forthwith by the Company upon notice if any analogous event to the matters set out in the foregoing sub-clause occurs in relation to the Client in its jurisdiction or under applicable law.
- 9.4 Any termination of the Contract pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10 FORCE MAJEURE**
The Company shall not be liable for any default (or deemed to be in breach of contract) by reason of any delay due to any circumstance beyond their reasonable control.
- 11 NON-SOLICITATION**
During the Term and for a period of six (6) months thereafter (except with the prior written consent of the Company), the Client shall not induce, solicit or employ (whether as an employee, agent, partner or consultant or any other form of employment or engagement) any employee of the Company directly associated with the Contract and the provision of the Services or other management of the Contract or any significant part of it.
- 12 DISPUTE RESOLUTION**
- 12.1 The parties will each use their reasonable efforts to negotiate in good faith and settle any major or material dispute that may arise out of or relate to the Contract, these Conditions, the Services or any breach of contract. If any such dispute cannot be settled amicably through ordinary negotiations by the respective representatives, the dispute shall be referred to the senior representatives nominated by the managing director of the Company and the Client's managing director who will meet in good faith in order to try and resolve the dispute.
- 12.2 If the dispute or difference is not resolved as a result of such meetings either party may (at such meeting or within ten (10) days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("the Adviser") before resorting to litigation with costs shared equally.
- 12.3 If the parties fail to reach agreement in the structured negotiations within twenty one (21) days of the Adviser being appointed, either party may then refer any dispute to litigation.
- 13 CONFIDENTIAL INFORMATION**
The parties agree not at any time during or after the Term to divulge or allow to be divulged to any person any Confidential Information relating to the business or affairs of the other party to the Contract except as permitted by law or with the other party's consent.
- 14 WARRANTY**

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- 14.1 The Company makes no express warranties and specifically disclaims any implied warranties, including any implied warranty of merchantability or fitness for a particular purpose, with respect to the performance of Services under the Contract and these Conditions to the extent permissible by law.
- 14.2 The Company does not guarantee, and nothing contained in the Contract or these Conditions shall be construed as a guarantee, that the Service performed or to be performed by the Client will achieve any projected level of results.

15 **NOTICES**

Any notice or other communications to be given under the Contract shall be in writing and may be delivered by hand or sent by first class prepaid recorded delivery post (or if the recipient is in another country by prepaid airmail) to the relevant address(es) stated in the Contract (or to such other address as the addressee may from time to time have notified for that purpose) or sent by facsimile transmission to the relevant number. Communications shall be deemed to have been received, if delivered by hand at the time of delivery, if posted two (2) working days (7 (seven) working days if prepaid airmail) after posting, and if sent by fax transmission, at the date of transmission.

16 **ACKNOWLEDGEMENTS AND GENERAL MATTERS**

- 16.1 The parties acknowledge that the Services are not fault free and it may be impaired by matters, conditions or circumstances beyond the Company's control and the Client will be entitled to the quality of Service generally provided by the Company to their customers.
- 16.2 The Client agrees that (save in respect of statements made fraudulently) it shall have no remedy in respect of any untrue statement upon which it relied in entering the Contract and that its only remedies shall be for breach of contract.
- 16.3 It is acknowledged that the Company shall not be liable for breach of contract or any other failure or defect in performance of the Services (or any Additional Services, work or project) which are performed other than by employees of the Company or performed by the Client or its agents or their employees or by any other third parties.
- 16.4 If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if these Conditions had been agreed with the invalid, illegal or unenforceable provisions eliminated.
- 16.5 The Company may employ sub-contractors for carrying out any part of the Services.
- 16.6 These Conditions (together with the terms (if any) set out in the Proposal, any Services Sheet or Quotation or specification and/or Charges Sheet) constitute the entire Agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties.
- 16.7 All other warranties, terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

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- 16.8 In the event of any conflict between the provisions of these Conditions and the Services Sheet or Charges Sheet, these Conditions shall prevail. In the event of any conflict between the Contract provisions and these Conditions, the parties shall adopt the meaning which best gives commercial efficacy to the Contract having regard to the Company's original intention.
- 16.9 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.10 The parties acknowledge and agree that the Contract shall not establish or constitute any relationship of partnership, joint venture, franchise or agency between the parties and except as otherwise expressly provided or agreed neither party shall have the power to bind the other without the other's prior written consent.
- 16.11 The Client shall not assign all or any of its rights or obligations under this Agreement without the written consent of the Company.
- 16.12 Except as expressly provided (including in respect of indemnity), the parties do not intend any term of this Contract to create any rights or benefits to any other party other than the parties to the Contract or to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any third party which exists or is available apart from the Act.
- 16.13 If any provision of the Contract or these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract or these Conditions and the remainder of the provision in question shall not be affected.
- 16.14 The Contract and these Conditions shall be governed by the law of England and Wales, and the Client submits to the exclusive jurisdiction of the courts of England and Wales.

Interpretation

In these Conditions the following words and phrases shall have the following meanings unless the context requires otherwise:

“Additional Services” any other services other than the Services agreed to be provided by the Company to the Client on agreed terms and set out as such in the Services Sheet or specification;

“Charges” the Company's charges as set out on the Charges Sheet or the Contract and from time to time for the provision of the Services unless otherwise expressly agreed with the Client;

“Charges Sheet” the sheet or document setting out the applicable Charges in respect of the Services;

“Company Material” any Documents or other materials, and any data or other information provided by the Company in connection with or relating to the Services;

“Client” the person, company, firm or entity being party to the Contract and to whom the Services are provided;

“Company” Vericool Limited; Reg. No. 07683425

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‘Confidential Information’ all and any information (including information of whatever nature relating to the [technology, financial or business] as a result of the Contract.

“Contract” the contract between the Company and the Client (in whatever form) for the provision of the Services to which these Conditions relate (whether appended, incorporated or attached);

“Client Material” any Documents or other materials, and any data or other information provided by the Client relating to the Services;

“Documents” includes, in addition to a document in writing, any map, data, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device (electronic or otherwise) embodying any other data;

“Services” the services agreed to be provided by the Company to the Client and set out in the Proposal and Quotation (and the “Services” shall include the Additional Services where the context admits);

“Services Sheet” the sheet or document setting out the Services agreed to be provided under or pursuant to the Contract;

“Term” the period from the start date to the end date (being and including any minimum or initial period for the provision of the Services) as set out or agreed under the Contract and continuing thereafter in full force and effect unless terminated in accordance with the provisions of these Conditions;

“VAT” value added tax.