

1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Conditions: These terms and conditions.

Contract: The contract created by the Customer's acceptance of a Quote for Services by the Supplier under clause 2.2.

Contract Price: The price for the provision of Services, as set out in (or calculated in accordance with the rate set out in) the Quote.

Contract Documents: These Conditions and the terms of the Quote accepted by the Customer.

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

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

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

Deliverables: All Documents, products and materials developed by the Supplier and delivered to the Customer pursuant to the provision of the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: Includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material: All Documents, information, content and materials provided by the Customer relating to the Services, including computer programs, website content, data, reports and specifications.

Intellectual Property Rights: All patents, copyright and related rights, trade marks, domain names, rights in goodwill, registered and unregistered design rights, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

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 including computer programs, data, reports and specifications.

Quote: A quote issued by the Supplier for the supply of Services.

Services: The services to be provided by the Supplier under the Contract as set out in the Quote together with any other services which the Supplier provides or agrees to provide to the Customer.

Supplier: ETL Data Solutions Limited (Company No. 6573023) Registered in England & Wales at The Elsie Whiteley Innovation Centre, Hopwood Lane, Halifax, HX1 5ER.

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

1.2 References to clauses are to the clauses of these Conditions. Words in the singular shall include the plural and vice versa.

1.3 Where the words "include(s)", "including" or "in particular" are used in these Conditions, they are deemed to have the words "without limitation" following them and where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.

2. THE CONTRACT

2.1 The Supplier may issue a Quote following a request by the Customer to do so.

2.2 The Quote may be accepted by the Customer at any time during its period of validity by signing and returning a copy to the Supplier. By accepting the Quote the Customer appoints the Supplier to supply the Services to it in consideration of the Contract Price and subject to the terms of the Contract Documents. If the Customer does not sign and/or return a copy of the Quote, it will nevertheless be deemed to have accepted the Quote if, after receipt of the Quote, it accepts the provision of any (or any part of) the Services by the Supplier.

2.3 These Conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.4 Quotes are given by the Supplier on the basis that no Contract shall come into existence except in accordance with clause 2.2. Any Quote is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it. Quotes are based on the Supplier's current costs of production and are subject to amendment at any time. The appointment of the Supplier will commence upon receipt by the Supplier of a Quote signed by the Customer (or alternatively upon commencement of the Services) and will last until completion of the Services unless terminated in accordance with these Conditions.

2.5 In the event of any inconsistency between the terms of these Conditions and the Quote, the terms of the Quote will prevail.

3. SERVICES

3.1 The Supplier will provide the Services described in the Quote.

3.2 To the extent that the Quote provides no timescale for the completion of Services, the Supplier and the Customer may agree any such timescales in writing, but any such timescales will be not be binding on the Supplier and time for completion of the Services shall not be of the essence of the Contract.

3.3 Where the Services include website design and development services, the following provisions will also apply:

(a) The parties may agree a project plan and acceptance tests in writing which, when agreed, will be signed on behalf of both parties and will become part of the Contract Documents;

(b) The Supplier may include the statement "Designed by ETL Data Solutions Limited" on the home page of the website in a form to be agreed;

(c) Any third party software supplied pursuant to the provision of the Services is supplied in accordance with the relevant licensor's standard terms.

3.4 The Customer acknowledges that the Supplier has no control over any content placed on a website hosted by the Supplier (a "Hosted Site"), and the Supplier does not purport to monitor the content of a Hosted Site. The Supplier reserves the right to remove content from a Hosted Site where it reasonably suspects such content is unlawful or inappropriate. The Supplier will notify the Customer if it becomes aware of any allegation that content on the Hosted Site may be unlawful or inappropriate.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Quote. The Supplier will perform the Services with reasonable care and skill.

4.2 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it by the Customer, provided that it shall not be liable if, as a result of such observation, it is in breach of any of its obligations under this Contract.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

(a) co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager, who shall have the authority contractually to bind the Customer on matters relating to the Services;

(b) provide, for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, such access to the Customer's premises, office accommodation, data, servers and other facilities as may be reasonably required by the Supplier;

(c) provide, in a timely manner, access to such In-put Material and other information as the Supplier may request or reasonably require and ensure that it is accurate in all material respects;

(d) where relevant be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, before and during the supply of the Services at those premises, and informing the Supplier of all of its obligations and actions under this clause 5.1(d);

(e) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is to be used in relation to the Services and conforms to all relevant UK standards or requirements failing which the Supplier will have the right to reject such equipment and charge additional costs incurred in obtaining any replacement equipment.

(f) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Services are to start;

(g) ensure that any In-put Material to be used in performing the Services does not infringe any applicable law or third party Intellectual Property Rights;

(h) keep and maintain the Supplier's Equipment in accordance with the Supplier's instructions as notified in writing from time to time and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, or by any failure to comply with its obligations in clause 5.1 above, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention, delay or failure.

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses) 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 the Supplier confirming such costs, charges and losses to the Customer in writing.

6. CHANGE CONTROL

6.1 If at any time the Customer requests a change to the scope or execution of the Services the Customer will provide such details of the requested changes to the Supplier as the Supplier may require and, if the Supplier is willing and able (in its absolute discretion) to provide such amended Services, the Supplier will issue an amended Quote setting out the amended Services and an amended Contract Price.

6.2 If the Customer wishes the Supplier to proceed with the change, it shall sign and return to the Supplier the amended Quote, whereupon the amended Quote will become the applicable Quote for the purposes of these Conditions. For the avoidance of doubt, the Supplier will have no obligation in relation to any amended Quote (or any requested amendments to the Services) unless and until an amended Quote is signed (or otherwise clearly accepted) by the Customer and returned to it in accordance with the provisions of this clause.

6.3 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 Customer shall not unreasonably withhold or delay consent to it provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer reasonable notice of any change, and will submit to the customer a duly amended Quote for signature by the Customer.

7. CHARGES AND PAYMENT

7.1 The Customer will pay the Contract Price in consideration for the provision of the Services. The Contract Price may be a fixed price or it may be a price calculated on a time and materials basis. Clause 7.2 shall apply if the Supplier provides Services on a time and materials basis. The remainder of this clause 7 shall apply regardless of whether the Contract Price is a fixed price or a price calculated on a time and materials basis.

7.2 Where Services are provided on a time and materials basis:

(a) The Contract Price payable for the Services shall be calculated in accordance with the formula, or the Supplier's standard daily fee rates, as set out in the Quote;

(b) The Supplier shall be entitled to charge on a pro-rata basis for part-days; and

(c) The Supplier shall ensure that every invoice relating to the Services features an itemised list of work done within the applicable invoice period. The Customer will be deemed to have accepted the accuracy and completeness of the said itemised list unless the Customer gives notice to the Supplier that it does not accept the same within 5 days of receipt of the invoice.

- 7.3 The Contract Price may be paid in instalments if provision for payment by instalments is made in the Quote or if the Contract Price is calculated on a time and materials basis (in which case the Supplier will submit invoices on a monthly basis). Otherwise, the Supplier will invoice the Customer for the Contract Price on or at any time after completion of the Services. If the duration of the Services is greater than one month, the Supplier reserves the right to submit interim invoices every 30 days.
- 7.4 The Contract Price excludes:
- 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 (other than the Services) reasonably and properly provided by third parties and required by the Supplier for the supply of the Services;
 - VAT, and
 - such expenses, materials and third party services shall be invoiced by the Supplier, and VAT (if applicable) will be added by the Supplier to all its invoices to the Customer, and the Customer will duly pay the same in accordance with the provisions of this clause.
- 7.5 The Customer shall pay in pounds sterling each invoice submitted to it by the Supplier, in full and in cleared funds, and without any deduction or set off within 30 days of receipt and in accordance with the provisions of this clause.
- 7.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- charge interest on such sum from the due date for payment at the rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - suspend some or all of the Services until payment has been made in full.
- 7.7 Time for payment shall be of the essence of the Contract.
- 7.8 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables (except to the extent that they contain any pre-existing Intellectual Property Right of the Customer, and subject to any written agreement to the contrary) and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 8.2, the Supplier hereby licences all such rights in the Deliverables to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services.
- 8.2 Where the provision of Services requires the use by the Supplier of any Intellectual Property Right of the Customer, the Supplier will only use such Intellectual Property Rights strictly to the extent as is necessary for the performance of the Services, and the Customer hereby grants the Supplier such licence to do so.

9. CONFIDENTIALITY

- 9.1 Any party (the "Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by the other party (the "Disclosing Party"), its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business or its products which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or sub-contractors are made aware of the confidential nature of such confidential material.

10. LIMITATION OF LIABILITY

- 10.1 This clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- any breach of the Contract;
 - any use made by the Customer of the Services, the Deliverables or any part of them; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- for death or personal injury resulting from negligence; or
 - for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by the Supplier.
- 10.4 Subject to clauses 10.2 and 10.3:
- the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, business, anticipated savings, goods, contract, use or loss or corruption of data, software or information, or for depletion of goodwill or any special, indirect or consequential or pure economic loss, costs, damages, charges or expenses.
 - 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 Services shall be limited to the price paid by the Customer for the Services.
 - The Supplier will not be liable for, and the Customer will indemnify the Supplier against, any costs, losses, damages or charges arising from any claims, proceedings or actions arising from the Supplier's use of the In-put Material in the provision of the Services.

11. TERMINATION

- 11.1 Without prejudice to any other rights or remedies which the parties may have, any party (the "Terminating Party") may terminate the Contract immediately on giving notice to the other (the "Breaching Party") if:
- the Breaching 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 being notified in writing of the breach; or
 - an order is made or a resolution is passed for the winding up of the Breaching Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order against the Breaching Party; or
 - an order is made for the appointment of an administrator to manage the affairs, business and property of the Breaching Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Breaching Party, or notice of intention to appoint an administrator is given by the Breaching Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - a receiver is appointed of any of the Breaching Party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Breaching Party; or
 - the Breaching Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - the Breaching Party ceases, or threatens to cease, to trade; or
 - the Breaching Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 11.2 On termination of the Contract for any reason:
- the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices plus any 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;
 - the Customer shall, within a reasonable time, return all of the Supplier's Equipment and Pre-existing Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them; and
 - the accrued rights 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. FORCE MAJEURE

- 12.1 The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing the Services by acts, events, omissions or accidents beyond its reasonable control, including 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, war, riot, civil commotion, malicious damage, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. GENERAL

- 13.1 A waiver of any right under the Contract Documents is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 13.2 Personal data (as the same is defined in the Data Protection Act 1996) relating to the Customer or the Customer's employees acquired by the Supplier will be processed by or on behalf of the Supplier in connection with the Services and may be used by the Supplier for marketing other similar services to the Customer.
- 13.3 The Supplier warrants that, to the extent it processes any personal data on behalf of the Customer (i) it shall act only on instructions from the Customer, and (ii) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 13.4 If any provision (or part of a provision) of the Contract Documents are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 13.5 The parties agree, in the circumstances referred to in clause 13.4, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision in the Contract Documents shall be suspended while an attempt at such substitution is made.
- 13.6 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to its subject matter other than as expressly set out in the Contract Documents.
- 13.7 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.8 Nothing in the Contract Documents is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other.
- 13.9 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 13.10 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Quote (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at the 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 13.11 Subject to clause 6, no variation of any of the Contract Documents shall be valid unless it is in writing and signed by each of the parties.
- 13.12 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.