

## TERMS & CONDITIONS

Please read these Terms and Conditions as well as any applicable Supplemental Terms or Conditions, policies or agreements carefully. The following Terms and Conditions apply to contracts that FyfeWeb (“Company”) may enter into from time to time for the supply of Products, Goods or Services (“Product” or “Service”) provided or to be provided, Equipment sold or to be sold and/or Software licensed or to be licensed, by FyfeWeb to the Customer.

### GENERAL

- (1) The definitions and rules of interpretation set out in herein shall apply to these Terms and Conditions and all Agreements and Contracts created in accordance with them. Words of a technical nature used in these Terms and Conditions will (unless inconsistent with the context or otherwise defined herein) be construed in accordance with the meanings set out in the Information Technology Infrastructure Library (ITIL) framework.
- (2) These Terms & Conditions shall apply to and be incorporated into each Contract between Customer and FyfeWeb when in relation to subject matter. No addition to, variation of, exclusion or attempted exclusion of any term of a Contract shall be binding on Company unless in writing and signed by a director of Company.
- (3) The parties agree that these Terms and Conditions will prevail over any inconsistent terms and conditions contained in, referred to in, the Customer’s purchase order, confirmation of order or specification or as may otherwise be implied by law, trade, custom practice or a course of dealing.
- (4) In these Terms and Conditions and any Contracts or Agreements: (1) words denoting the singular includes the plural and vice versa; (2) references to sub-clauses, clauses, schedules or appendices are to sub-clauses, clauses, schedules or appendices of these Terms & Conditions unless informed otherwise; (3) a reference to a person includes firms, companies, government entities, trusts and partnerships; (4) the term ‘includes’, ‘including’, ‘in particular’ or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding such terms and does not exclude anything not listed; (5) “including” is understood to mean “including without limitation”; (6) reference to any statutory provision includes any and all modifications or amendments of it; (7) a reference to one gender shall include a reference to the other gender(s); (8) the headings and sub-headings do not form part of this Agreement; (9) If a provision of a Contract is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect; (10) Nothing in a Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power); (11) nothing in these Terms and Conditions or in any Contract shall operate to assign or transfer any Intellectual Property Rights from FyfeWeb to the Customer. Notwithstanding the foregoing, FyfeWeb shall be entitled to use, develop and share knowledge, experience and skills of general application gained through providing Products and otherwise fulfilling its obligations under Contracts.
- (5) The Customer's purchase order (or a request thereof) constitutes an offer by the Customer to purchase the Products specified in it on the basis of the Proposal, these Terms and Conditions and any Supplemental Terms and Conditions (“Contract Terms”). Accordingly, the earlier of the execution and return of the acknowledgement copy of the purchase order form by FyfeWeb or FyfeWeb’s commencement or execution of work pursuant to the Proposal, shall establish a Contract for the supply and purchase of those Products in accordance with the Contract Terms.

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- (6) For the avoidance of doubt, where the relevant Proposal or agreement has not been signed by either (or both) of the Customer or FyfeWeb, the Contract Terms will nevertheless apply to the Contract, provided that the Customer has had prior notice of them (regardless of whether the Customer has indicated its acceptance in writing). By instructing FyfeWeb to supply any Products and/or by paying any Charge(s) or invoice(s) of FyfeWeb, whether set out in the Contract or otherwise, the Customer indicates its acceptance of the Contract Terms.
- (7) Certain Products provided by Company are subject to Supplemental Terms & Conditions which will (where applicable) form part of the Customer's contract with FyfeWeb and will supplement and (unless expressly stated otherwise in the relevant Supplemental Terms and Conditions) incorporate these Terms and Conditions. In the case of a conflict or ambiguity between: (i) the Proposal; (ii) any Project Plan comprised within a Proposal; (iii) the Terms and Conditions; and, (iv) any applicable Supplemental Terms and Conditions, then a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.
- (8) FyfeWeb shall use its reasonable endeavours to supply any Products by the means and in accordance with any timetable set out in the Proposal (including in any Project Plan). Where no means are specified, the relevant Products shall be supplied by such means as FyfeWeb determines appropriate and where no timetable is specified, the relevant Products shall be supplied within a reasonable time. Whilst FyfeWeb will use its reasonable endeavours to provide or (as the case may be) deliver the relevant Products, Goods or Services by any date or within any period agreed upon, such dates and periods are estimates only, given in good faith and FyfeWeb shall not be liable for any failure to deliver by such date or within such period and nor shall any delays in the delivery of a Contract entitle the Customer to refuse to take delivery of or otherwise accept any Products, Goods or Services. Time for delivery shall not be of the essence of any Contract
- (9) The description of any Product contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by FyfeWeb is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by FyfeWeb may be corrected by FyfeWeb without any liability on the part of FyfeWeb.
- (10) FyfeWeb reserves the right to supply Products which differ from the specifications agreed between the parties and/or to modify any specifications in respect of Services provided that this does not materially affect the performance of the Equipment or Services.
- (11) If at any time after the acceptance of a Contract pursuant to these Terms and Conditions either party wishes to change the scope of a Product, it shall submit details of the requested change to the other in writing. If either party identifies or requests a change to the scope or execution of a Product, FyfeWeb shall, within a reasonable time, provide a written estimate to the Customer of: (1) the likely time required to implement the change; (2) any variations to the Charges arising from the change; (3) the likely effect of the change on the Project Plan; and; (4) any other impact of the change on the terms of the Contract.
- (12) If FyfeWeb identifies or requests a change to the scope of a Product, the Customer shall not unreasonably withhold or delay consent to it. Any request by the Customer for the cancellation or reduction of the scope a Product to be supplied by FyfeWeb to the Customer will only be accepted at the discretion of FyfeWeb and in any case on the condition that any costs or expenses incurred by FyfeWeb up to the date of such cancellation or variation (and all loss or damage resulting to FyfeWeb by reason of such cancellation or variation and including, for the avoidance of doubt the payment section identified in this Agreement) will be paid by the Customer to FyfeWeb forthwith.

Acceptance of such cancellation or variation will only be binding on FyfeWeb if in writing and signed by a director of FyfeWeb.

## **PRICING AND PAYMENTS**

- (13) Unless otherwise stated in writing, quotations are valid for 14 days from the date of issue and are exclusive of: (1) Value added tax (“VAT”) and any other relevant taxes which FyfeWeb shall add to its invoices at the appropriate rate; and (2) any chargeable expenses and disbursements which are incurred by FyfeWeb or its personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 55p per mile, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by FyfeWeb for the supply any Products. Such expenses, materials and third-party services shall be invoiced by FyfeWeb
- (14) Subject to these Terms and Conditions, FyfeWeb may: (1) at any time by giving the Customer fourteen (14) days written notice, increase its prices to take account of any increase in the cost to FyfeWeb of supplying the Products (including, but not limited to, any change in FyfeWeb provider rates) and such increased prices ruling at the date of supply of a Product, Goods or Service by FyfeWeb shall be substituted for the previous contract price; and (2) at any time after the first anniversary of the Commencement Date, increase the Charges by giving to the Customer not less than one month written notice, provided that: (2) the increase shall not exceed a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to time) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this clause (in the case of the second or any subsequent increase) up to the date of this notice; and the increases shall be no more frequent than once in any 6-month period.
- (15) The Customer shall pay the Charges to FyfeWeb in accordance with the Contract Terms: (1) Clause 16 shall apply if Services are to be provided on a time-and-materials basis. (2) Clause 17 shall apply if Products are to be provided for a fixed price. The remainder of this clause 15 shall apply in either case
- (16) Where the Services are provided on a time-and-materials basis: (1) the Charges payable for the Services shall be calculated in accordance with FyfeWeb’s standard daily fee rates as amended from time to time; (2) FyfeWeb’s standard daily fee rates are calculated on the basis of Normal Working Hours; (3) FyfeWeb shall be entitled to charge at an overtime rate for part days and for time worked by members of the team outside of Normal Working Hours on a pro-rata basis. Overtime will be calculated by multiplying FyfeWeb’s standard time-based overtime charging rates (as may be set out in the Proposal and/or notified by FyfeWeb to the Customer from time to time) by the time spent by FyfeWeb personnel performing the Services; and (4) FyfeWeb shall invoice the Customer monthly in arrear for its Charges for time, expenses and materials (together with VAT where appropriate) for the month concerned.
- (17) Where Products are provided for a fixed price, the price for the Products shall be the amount set out in the Proposal or in FyfeWeb’s quotation. Where the price envisages payment in instalments and/or Project Milestones, the Charges shall be paid to FyfeWeb in instalments as set out in the Proposal or on it achieving the corresponding Project Milestone as applicable. On achieving a Project Milestone, FyfeWeb shall invoice the Customer for the Charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).

- (18) The Customer shall pay each invoice submitted to it by FyfeWeb in full, and in cleared funds, within thirty (30) days of receipt. Time for payment shall be of the essence of the Contract.
- (19) Without prejudice to any other right or remedy that FyfeWeb may have, if the Customer fails to pay FyfeWeb on the due date FyfeWeb may 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 the Bank of England (or at a rate of 4% in the event that the base rate of that bank is less than zero), accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.
- (20) All payments payable to FyfeWeb under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under a Contract.
- (21) All amounts due under a Contract shall be paid by the Customer to FyfeWeb in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). FyfeWeb may, without prejudice to any other rights it may have, set off any liability of the Customer to FyfeWeb against any liability of FyfeWeb to the Customer, whether such liability is present or future, liquidated or unliquidated, and whether or not such liability arises under the Contract, another agreement or otherwise.
- (22) Although FyfeWeb is a 24/7 company – if an incident is raised out of hours: (a) time to resolve SLA timer starts once standard working hours commence; and (b) we reserve the right to charge a call out fee if a priority incident is raised out of hours and requires expedited engineer attendance to site.

### **THIRD PARTY CONTRACTS**

- (23) If any payments due to FyfeWeb in respect of Products, Good or Services is to be paid by a third party then the Customer agrees that immediately on delivery of the Product, Good or Service in question the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to FyfeWeb for the relevant Products in accordance with the Contract Terms.
- (24) It is agreed and acknowledged between FyfeWeb and the Customer that: (1) in providing the Services to the Customer, FyfeWeb may enter into binding contractual commitments (“Third Party Contracts”) on the Customer’s behalf with service providers and other third parties (“Third Party Providers”); (2) the Customer acknowledges that the third-party Contract creates rights and obligations between FyfeWeb and the Third Party Provider; and (3) notwithstanding that the Customer is not a party to the Third Party Contract, the Customer is and shall be at all times responsible and held liable for any and all charges (including call and data charges), termination fees and any other charges and fees that may be charged by the Third Party Provider to FyfeWeb in respect of the Services provided to the Customer pursuant to the Third Party Contracts (“Third Party Charges”) and the Customer undertakes to pay such sums on demand and on an indemnity basis and defend, indemnify, keep indemnified and hold FyfeWeb harmless against any and all third party claims, actions, and proceedings, and all losses, damages, expenses and costs (including without limitation legal costs) associated with such Third Party Charges.

### **SOFTWARE**

- (25) Where Software supplied is Third Party Software, FyfeWeb shall supply or otherwise make available to the Customer a copy of the Third-Party Software Licence on request

from the Customer, whether by means of the Third-Party Software Vendor's website or otherwise. In supplying any such Third-Party Software Licence FyfeWeb shall be permitted to redact such information contained in the Third-Party Software Licence as it deems reasonably necessary to protect its Confidential Information. The Customer shall be responsible for ensuring that the Customer's use of the Third-Party Software is properly licensed.

- (26) The parties acknowledge that the Third-Party Software Licence will (in addition and without prejudice to any terms relating to the Third-Party Software set out in the Proposal) stipulate the Customer's rights to use the Third-Party Software, and the restrictions on the Customer's use of the Third-Party Software.
- (27) The Customer must abide by the terms of the Third-Party Software Licence and any terms relating to the Third-Party Software set out in the Proposal and ensure that all persons using the Third-Party Software supplied (or otherwise made available) by FyfeWeb to the Customer abide by the terms of the Third-Party Software Licence.
- (28) The parties acknowledge that the Third-Party Software Licence creates rights and obligations between the Customer and the Third-Party Software Vendor, and that FyfeWeb is not a party to the Third-Party Software Licence.
- (29) FyfeWeb shall as far as it is able pass on to the Customer the benefits of any Third-Party Software Vendor warranties in relation to any Third-Party Software. FyfeWeb gives no warranties or guarantees and makes no representations concerning the Third-Party Software, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from the Contract between FyfeWeb and the Customer to the fullest extent permitted by applicable law.

## **CUSTOMER OBLIGATIONS**

- (30) The customer shall: (1) co-operate with FyfeWeb in all matters relating to the Contract and appoint an authorised representative of the Customer (the Customer Representative) who has the authority to contractually bind the Customer on matters relating to the Contract; (2) provide in a timely manner such access to the Customer's premises, systems and data (including where agreed in the Contract, providing FyfeWeb with access to the Customer's systems by use of remote desktop support software) and such office accommodation and other facilities, as is requested by FyfeWeb; (3) provide in a timely manner such information as FyfeWeb may request, and ensure that such information is accurate in all material respects; (4) comply with any Mandatory Policies that are notified to it from time to time; (5) take all steps to ensure the welfare and safety of any FyfeWeb Personnel at any premises of the Customer and ensure that its premises and all plant and equipment which is used by FyfeWeb's Personnel or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work etc Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety; and (6) be responsible (at its own cost) for performing and procuring the performance of the Customer Responsibilities including preparing the relevant premises for the supply of Products.
- (31) If FyfeWeb's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's Personnel (including any failure to perform or procure the performance of the Customer Responsibilities or any delays or postponements by the Customer of any installation dates specified by FyfeWeb, of dates for scheduled service visits or otherwise) then: (1) FyfeWeb shall be granted relief from any failure of it to carry out the Services, deliver the Products concerned or otherwise comply with its obligations under the Contract; (2) Customer shall in all circumstances be

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liable to pay to FyfeWeb on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, including any loss of profit, or loss of reputation, or loss or damage to property, or injury to or death of any person or loss of opportunity to deploy resources elsewhere), subject to FyfeWeb confirming such costs, charges and losses to the Customer in writing.

- (32) The Customer is responsible in relation to its use, and the use of its Personnel, of the relevant Products and for: (1) satisfying itself that the relevant Products are adequate for its requirements; (2) supplying all storage media (including backup tapes should it be applicable) and ensuring that it is suitable in all respects; (3) unless specifically undertaken by FyfeWeb as part of supplying a Product, all necessary security arrangements appropriate to its use of the Product including without limitation passwords, pass codes, audit controls, the creation of backup files and operating methods and procedures; and (4) all results it obtains from the Products.

## **LIMITATION OF LIABILITY**

- (33) The Customer agrees and acknowledges that the level of the Charges takes fully into account the limits of FyfeWeb's entire financial liability (set out below) for the applicable Products supplied or to be supplied to the Customer, the Customer's use of them, and for anything else in connection with any Contract between FyfeWeb and a Product.
- (34) Nothing in these Terms and Conditions or in any Contract Terms shall limit or exclude the liability of FyfeWeb or the customer in respect of: (1) death or personal injury caused by negligence; or (2) fraud.
- (35) Subject to Clause 33, FyfeWeb shall not be liable to the Customer whether in contract, tort (including for negligence or breach of statutory duty), or for negligent or innocent misrepresentation, or otherwise, for any of the following types of loss or damage, even if the Customer has been advised of the possibility of such loss or damage: (1) loss or depletion of goodwill or reputation; or (2) loss of profits, or revenue, or contracts or anticipated savings; or (3) loss or damage arising from loss or damage or corruption of data or information; or (4) loss of use; or (5) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or (6) loss relating to Out-of-Scope Activities.
- (36) Subject to Clauses 33 & 34, if the Customer: (1) incurs any loss arising in connection with the performance or contemplated performance of these Terms and Conditions or any Contract (whether in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise and whether or not such claim arises pursuant to an express or implied term of the relevant Contract Terms); and (2) liability for any such loss is established (a "Supplier Default"), then the total aggregate liability of FyfeWeb to the Customer under the relevant Contract or otherwise shall in no circumstances exceed: (1) where the Supplier Default relates to Equipment or Software supplied by FyfeWeb, the sum of the amount paid by the Customer to FyfeWeb for the Equipment or Software that is directly affected by the Supplier Default; and (2) where the Supplier Default relates to a Service supplied by FyfeWeb, the sum of the amount paid by the Customer to FyfeWeb for the service element(s) of the Service(s) that are directly affected by the Supplier Default (the "Affected Services") during the preceding one month immediately prior to the act or omission giving rise to the loss.

## **WARRANTY, LIABILITY AND DISCLAIMERS**

- (37) FyfeWeb warrants to the customer that: (1) it has the legal right and authority to enter into Contracts and otherwise to perform its obligations under the Contract Terms; and (2) it shall comply with all applicable laws in relation to its performance of all Contracts.
- (38) The Customer warrants to FyfeWeb that: (1) the Customer has the legal right and authority to enter into Contracts and otherwise to perform its obligations under these Terms and Conditions and the Contract Terms; (2) in relation to its use of the Software neither it nor any of its employees or associated parties will attempt to or permit any person to reverse engineer, decompile, monitor or in any way replicate the coding, software or functionality of any Software; (3) it has, and shall maintain throughout the term, the full capacity, authority and any necessary licences and approvals under applicable laws to enter into and perform its obligations contained in any Contract; and (4) it shall comply with all applicable laws in relation to its performance of all Contracts.
- (39) The Customer undertakes to defend, indemnify, keep indemnified and hold FyfeWeb harmless against any and all third party claims, actions, and proceedings, and all losses, damages, expenses and costs (including without limitation legal costs) associated therewith, where any of the same arise out of or in connection with either the Customer's use of or access to any Product, including those arising out of: (1) the failure of the Customer to fully observe or perform any of its obligations contained in a Contract (including the Customer Responsibilities); or (2) any loss, damage or injury to property or persons caused or contributed to by any act or omission of the Customer or its Personnel; or (3) any breach by the Customer of any warranty, undertaking or other terms or conditions of any Contract; (4) or the possession of any of the Customer's data by FyfeWeb in accordance with Contract Terms, unless, and to the extent that, the same arise as a direct result of FyfeWeb's negligence or as a direct result of any breach of its obligations under the Contract.
- (40) It is acknowledged and agreed by the Customer that: (1) in respect of Products supplied by FyfeWeb, whilst FyfeWeb will endeavour to use its experience and expertise to advise the Customer, FyfeWeb acts only in the capacity of a supplier to the Customer. The Customer assumes sole responsibility for ensuring that the Products supplied by FyfeWeb meet its requirements and for results obtained from the use of the same by the Customer and for conclusions drawn from such use; (2) FyfeWeb shall not have any obligation or duty, and shall not bear any liability or responsibility, in relation to any of those matters which the Customer expressly undertakes, warrants, or bears responsibility for in the applicable Contract (including the Customer Responsibilities); and except as expressly set out in the Contract Terms, FyfeWeb gives no warranties or guarantees and makes no representations concerning the supply of any Product, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from the Contract between FyfeWeb and the Customer to the fullest extent permitted by applicable law.

## **CONFIDENTIALITY**

- (41) The Customer shall keep in strict confidence all Confidential Information received by it from FyfeWeb. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Customer's obligations to FyfeWeb, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

- (42) Each party may be given access to Confidential Information from the other party, whether in order to perform its obligations under a Contract, these Terms and Conditions, or otherwise. A party's Confidential Information shall not be deemed to include information that: (1) is or becomes publicly known other than through any act or omission of the receiving party; (2) was in the other party's lawful possession before the disclosure; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party, which independent development can be shown by written evidence.
- (43) Subject to clause 45, each party shall hold the other's Confidential Information or Commercially Sensitive Information in confidence for the duration of the relevant Contract and for a period of fifteen (15) years following the termination or expiry of the Contract. Neither party shall make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- (44) FyfeWeb shall be entitled to disclose any Confidential Information to its employees, agents and advisors for the purposes of providing Products in accordance with a Contract, or in contemplation of providing such Products, prior to formation of the relevant Contract.
- (45) Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- (46) A party may disclose Confidential Information to the extent that such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 45, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- (47) All materials, equipment and tools, drawings, specifications and data supplied by FyfeWeb to the Customer shall at all times be and remain the exclusive property of FyfeWeb, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to FyfeWeb, and shall not be disposed of or used other than in accordance with FyfeWeb's written instructions or authorisation.
- (48) No party shall make, or permit any person to make, any public announcement concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction. Nothing in this clause 47 shall be construed as limiting either parties' obligations under these clauses (40-48) ("Confidentiality Clauses & Provisions")
- (49) The Confidentiality Clauses & Provisions included in these terms and Conditions and Contract Terms shall survive termination or expiry of the Contract, however arising.

## **FORCE MAJUEURE**

- (50) If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under a Contract (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event and the affected party shall be entitled to a reasonable extension of the time for performing such obligations.



- (51) A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under a Contract, must: (1) promptly notify the other; and (2) inform the other of the period for which it is estimated that such failure or delay will continue.
- (52) A party whose performance of its obligations under a Contract is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.
- (53) If a party whose performance of its obligations under a Contract is affected by a Force Majeure Event is prevented, by such circumstances beyond its reasonable control, from performance of its obligations for a continuous period in excess of one (1) month and such prevention substantially affects the operation of the Contract, the other Party shall have the right to terminate the Contract upon giving fourteen (14) days' written notice of such termination to the party whose performance of its obligations under the Contract is affected by a Force Majeure Event, in which case neither party shall have any liability to the other except that rights and liabilities accrued prior to such termination shall continue to subsist.

### **ASSIGNMENT & THIRD-PARTY RIGHTS**

- (54) FyfeWeb may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- (55) The Customer shall not, without the prior written consent of FyfeWeb, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract or purport to do the same.
- (56) Each Contract is for the benefit of the parties (and, where applicable, their successors and permitted assigns), and is not intended to benefit or be enforceable by any third party.
- (57) The exercise of the parties' rights under a Contract is not subject to the consent of any third party.

### **DURATION & TERMINATION**

- (58) Each Contract shall commence on the Commencement Date applicable to it. Where the Proposal includes an Initial Term then unless terminated earlier in accordance with these clauses (57-65), the relevant Contract shall continue for the Initial Term and shall automatically extend for 12 months ("Renewal Term") at the end of the Initial Term and at the end of each Renewal Term thereafter. Either party may give written notice to the other party, not later than ninety (90) days before the end of the Initial Term or the relevant Renewal Term, to terminate this Contract at the end of the Initial Term or (as the case may be) the relevant Renewal Term. Where the Proposal does not contain an Initial Term, the Contract shall continue until FyfeWeb completes the relevant supply of Products, upon which the Contract shall terminate automatically, subject to earlier termination in accordance with these clauses (57-65)
- (59) Without affecting any other right or remedy available to it, either party may give notice in writing to the other terminating a Contract: (1) immediately, if the other party suffers an Insolvency Event; or (2) on thirty (30) days written notice, if the Customer does not accept any amendments to a Contract pursuant to these Terms & Conditions; or (3) on fourteen (14) days' notice, if the party has not for a continuous period of one (1) month been able to perform its obligations as a result of a Force Majeure Event; or (4) immediately, if the other party commits a breach of any material term of a Contract and (if such breach is

remediable) fails to remedy that breach within a period of thirty (30) Business Days of being notified in writing that it is required to do so.

- (60) Without affecting any other right or remedy available to it, FyfeWeb may give notice in writing to the Customer terminating the whole (or part) of the Contract immediately if: (1) the Customer fails to pay any amount due under the Contract or any other contract between FyfeWeb and the Customer on the due date for payment and remains in default not less than seven (7) Business Days after being notified in writing to make such payment; or (2) the Customer commits a repeated breach of the Customer's obligations under a Contract. A repeated breach shall be deemed to be two or more breaches of the same, or any three breaches of different obligations of the Customer under one or more Contract(s) within a twelve month period where each of those breaches have been notified in writing by FyfeWeb to the Customer; or (3) there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010); or (4) the Customer commits any act or omission which could or might in the sole opinion of FyfeWeb bring FyfeWeb into disrepute or damage the reputation of FyfeWeb; or (5) the Customer infringes, violates or breaches any: (a) Customer Obligations; (b) warranties provided by Customer to FyfeWeb (clause 37); (c) Confidentiality obligations or agreements they have (clauses 40-48); (d) obligations listed with respect to assignments (clause 54); (e) obligations they possess pursuant to their Data Protection obligations (clauses 66-73); (f) violations of our Non-Solicitation and Non-Competition clauses (clauses 74-80); (g) intellectual property rights of FyfeWeb (including challenging the rights thereof).
- (61) Without limiting its other rights or remedies, FyfeWeb may suspend performance of all or any part of its obligations under a Contract or any other contract between the Customer and FyfeWeb if the Customer becomes subject to any of the events listed in clauses 58 or 59 (inclusive) or FyfeWeb reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract or any other contract between FyfeWeb and the Customer on the due date for payment. FyfeWeb shall have no liability to the Customer for any losses, damages, expenses or costs that the Customer may incur by reason of such suspension.
- (62) On termination of a Contract for any reason: (1) all other rights and licences of the Customer under the Contract shall terminate upon termination of the Contract; (2) any provision of a Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect. The Customer acknowledges that FyfeWeb will be entitled to remove any Software from the Customer's systems whether by means of remote access or otherwise and the Customer will not do or omit to do anything which might prevent or hinder such removal; and (3) FyfeWeb may destroy or otherwise dispose of any of the Customer's storage media, software, equipment or other items in its possession unless FyfeWeb receives, no later than ten (10) days after the effective date of the termination of this Contract, a written request for their delivery to the Customer. FyfeWeb will use its reasonable commercial endeavours to deliver the same to the Customer within thirty (30) days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and provided that the Customer meets any charges that FyfeWeb may charge for providing such assistance. The Customer shall pay all reasonable expenses incurred by FyfeWeb in returning or disposing of them.
- (63) On termination of the Contract for any reason, the Customer shall: (1) as soon as reasonably practicable, return or destroy (as directed in writing by FyfeWeb) any documents, handbooks or other information provided to it by FyfeWeb or data for the purposes of this Contract, including all documents and materials (and any copies) containing, reflecting, incorporating or based upon FyfeWeb' Confidential Information; (2)

as soon as reasonably practicable, return all of the equipment and materials owned by FyfeWeb or any third party, failing which, FyfeWeb may enter the relevant premises and take possession of them. Until these are returned or repossessed, the Customer shall be solely responsible for their safe-keeping; (3) the Customer shall immediately pay to FyfeWeb all of FyfeWeb' outstanding unpaid invoices (together with any accrued interest if such invoices are outside their payment terms) and, in respect of Services supplied but for which no invoice has been submitted, FyfeWeb may submit an invoice, which (notwithstanding anything to the contrary in the Contract or these Terms and Conditions) shall be payable immediately on receipt of invoice.

- (64) If prior to the expiry of the Initial Term or any Renewal Term, the Customer terminates this Contract for any reason other than as set out in clause 58, then in addition to any outstanding amounts payable in respect of clause 62(3), the Customer shall be obliged to pay to FyfeWeb by way of compensation, the balance of the Charges the Customer would have paid over a period equal to the unexpired residue of the Initial Term or (as the case may be) the Renewal Term immediately prior to the date of termination of this Contract less such discount as FyfeWeb shall reasonably apply to such balance in its discretion to reflect any savings in overheads. Any such payment shall become due within three (3) Business Days of receipt of invoice.
- (65) The Supplier and the Customer confirm that any sums calculable and payable pursuant to clause 63 represent a genuine pre-estimate of FyfeWeb' loss.
- (66) Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry and shall not affect the continuation after termination or expiry of any provision expressly stated to survive or implicitly surviving termination.

## **DATA PROTECTION**

- (67) For the purposes of these clauses, "controller", "processor", "data subject", "personal data", "process" and "processing" shall have the meanings given to them in the Applicable Data Protection Law.
- (68) Each party warrants to the other that it will process personal data in compliance with Data Protection Law. This clause 67 is in addition to, and does not relieve, remove or replace a party's obligation under the Data Protection Law.
- (69) The parties acknowledge that for the purposes of Data Protection Law, the Customer shall be the controller and FyfeWeb shall be a processor from the point any such personal data is transferred to (or otherwise shared) by the Customer to FyfeWeb ("Customer Data").
- (70) Without prejudice to the generality of clause 67, the Customer warrants to FyfeWeb that it has the legal right (including all necessary appropriate consents and notices) to disclose all personal data that it does in fact disclose to FyfeWeb under or in connection with these Terms and Conditions or any Contract, and that the processing of that personal data by FyfeWeb for the purpose of providing any Products, fulfilling any of its obligations under a Contract, and complying with all of its legal and regulatory obligations in accordance with these Terms and Conditions ("Permitted Purpose") will not breach any Data Protection Law.
- (71) If, notwithstanding the intentions of the parties set out at clause 68, FyfeWeb processes personal data as a controller, it shall comply with the provisions of the Data Protection Law imposed on a controller.
- (72) FyfeWeb shall, in relation to any personal data processed for the Customer in connection with a Contract or pursuant to these Terms and Conditions: (1) process that personal data

only for the Permitted Purpose and otherwise in accordance with the lawful, reasonable and documented instructions of the Customer, unless FyfeWeb is required by the laws of any member of the European Union or by the laws of the European Union applicable to FyfeWeb to process personal data, in which case FyfeWeb shall, to the extent permitted by such law, inform the Customer of that legal requirement before processing that personal data; (2) having regard to the state of technological development and the cost of implementing any measures, ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of such personal data, and against accidental loss or destruction of, or damage to such personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of, and access to, personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); (3) ensure that all Personnel who have access to and/or process personal data are obliged to keep the personal data confidential; (4) ensure that it will not transfer personal data provided to it by the Customer outside of the European Economic Area (“EEA”) unless such transfer is undertaken in accordance with applicable Data Protection Law; (5) assist the Customer, at the Customer’s cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and (6) notify the Customer without undue delay on becoming aware of a personal data breach.

- (73) In relation to any person (including any third party but excluding an employee of FyfeWeb) appointed by or on behalf of FyfeWeb to process personal data on behalf of the Customer in connection with a Contract or these Terms and Conditions (each a “Sub-processor”): (1) Customer acknowledges and hereby authorises FyfeWeb to engage in connection with the performance of any Contract those Sub-processors set out in our privacy policy (“Approved Sub-processors”) to these Terms and Conditions, which includes the identities of those Sub-processors and their country of location; (2) FyfeWeb may amend and update the Approved Sub-processors list by updating the sub-processor section within our privacy policy. Although we are not obliged, FyfeWeb may provide notice to the customer, should there be a fundamental, major or material change with respect a sub-processor. The Customer may notify FyfeWeb promptly in writing within ten (10) Business Days after receipt of FyfeWeb’s notice if the Customer has a reasonable basis for objecting to a new Sub-processor. FyfeWeb shall not appoint (or disclose any Customer Data to) that proposed Sub-processor until reasonable steps have been taken to address the objections raised by the Customer and the Customer has been provided with a reasonable written explanation of the steps taken; (3) prior to giving any Sub-processor access to any personal data in respect of which the Customer is controller (“Customer Data”), FyfeWeb shall ensure that such Sub-processor has entered into a written agreement with FyfeWeb including terms in the contract between FyfeWeb and the Sub-processor which are substantially the same as those set out in this data protection section, and the requirements of article 28(3) of the GDPR. FyfeWeb shall not be liable to the Customer for any failure by a Sub-processor to fulfil its obligations in relation to the processing of any Customer Data under the relevant Contract; and (4) to the extent that such sub-processing does not occur in the EEA, or in circumstances or a country that is the subject of a valid adequacy decision by the United Kingdom of Great Britain and Northern Ireland and the European Commission (“Restricted Country”), FyfeWeb may only authorise a Sub-

processor to process Customer Data in a Restricted Country if, the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand FyfeWeb and on the other hand the Sub-processor, or if requested by the Customer and required by Data Protection Law, procure that the Customer shall enter into (or procure that any relevant third party enters into) a data controller to data processor data transfer agreement, incorporating Standard Contractual Clauses.

- (74) The Customer acknowledges that FyfeWeb is reliant on the Customer as controller for direction as to the extent to which FyfeWeb is entitled to use and process Customer Data. Consequently, FyfeWeb will not be liable for any unauthorised or non-compliant use, loss, access or other processing of Customer Data (or any other personal data) or any claim brought by a data subject arising from any act or omission by FyfeWeb, to the extent that such action or omission resulted directly from the Customer's instructions and/or the Customer's failure to provide instructions. The Customer shall indemnify and hold FyfeWeb harmless against all losses, liabilities, costs (including reasonable legal costs), fees, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction or any penalties and fines levied by any governmental, regulatory or other competent authority that regulates and/or supervises any of FyfeWeb, the Customer and/or either of their activities (including activities of Customer using the Products)) that FyfeWeb suffers or incurs as a result of the Customer's instructions, and/or the Customer's failure to provide instructions (whether as a result of a claim by a data subject or otherwise).

## **NON-SOLICITATION & NON-COMPETITION**

- (75) The Customer must not, without the prior written consent of FyfeWeb, either during the relevant Term or within the period of twelve (12) months following the end of it, engage, employ or solicit for engagement or employment any Personnel of FyfeWeb who have been involved in any way in the negotiation or performance of the Contract.
- (76) The Customer agrees that if they breach the provisions of clause 74 by successfully soliciting, interfering with, procuring or enticing away any employee or contractor of FyfeWeb, they shall pay FyfeWeb promptly upon the written demand of FyfeWeb a sum equivalent to half the annual salary or fees paid by FyfeWeb to the person so solicited immediately before that person leaves FyfeWeb's employment or ceases to be engaged by FyfeWeb.
- (77) The Customer agrees that the amount referred to in clause 75 represents a reasonable pre-estimate of the loss and damage which FyfeWeb would suffer in the event of the circumstances described in cause 75 arising.
- (78) The provisions of these clauses 74-80, are without prejudice to the right of FyfeWeb to seek interim remedies through the court or otherwise in respect of the matters contemplated by it.
- (79) The parties agree that on the expiry or termination of a Contract, there will be no relevant transfer as defined in the Regulations and as a result no FyfeWeb Personnel or any other individual shall transfer their employment to the Customer or any future supplier of the Customer. The Customer shall indemnify FyfeWeb for all losses, liabilities, costs (including reasonable legal costs), fees, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction) incurred by FyfeWeb (including all redundancy costs) if, notwithstanding the provisions of this, any Personnel or other individuals do transfer to FyfeWeb or any future supplier to the Customer.
- (80) The Customer hereby acknowledges and recognises their possession of Confidential Information and knowhow and the highly competitive nature of the business of the

Company and accordingly agree that, in consideration of the premise(s) contained herein, You, any agent, officer, contractor, employee or the like of the Customer, will not, during the period of any Contract between the Customer and FyfeWeb and for three (3) years after the termination of the Contract, that Customer shall not: (1) directly or indirectly engage in any competitive business (defined as a business that designs, develops, manufactures, markets or sells a product, product line or service that competes with any product, product line or service of the Company as they presently exist or as may be in existence or development on the date of termination of Contract with FyfeWeb whether such engagement shall be as an employer, officer, director, owner, employee, partner or other participant, (ii) assist others in engaging in any competitive business in the manner described in the foregoing clause (i), or (iii) induce employees of FyfeWeb, its affiliates or subsidiaries to terminate their employment with the Company or such affiliate or subsidiary and/or engage in any competitive business. This is necessary to prevent any competitive business from gaining any unfair advantage from the Customer's knowledge of Confidential or Proprietary Information and knowhow.

- (81) During the course of the Contract between the Customer and FyfeWeb, for a period of three (3) years following the termination of such contract, for whatsoever the reason and whether such termination be voluntary or involuntary, Customer will not, directly or indirectly, as owner, officer, director, stockholder, partner, associate, consultant, manager, advisor, representative, employee, agent, creditor or otherwise, attempt to solicit or in any other way disturb or service any person, firm or corporation that has been a customer of FyfeWeb at any time or times within three (3) years prior to the termination date of the Customer Contract.

## **NOTICE(S)**

- (82) Any notice or other communication given to a party under or in connection with a Contract shall be in writing and shall be: (1) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or (2) sent by email to the address specified in the Proposal.
- (83) Any notice or communication shall be deemed to have been received: (1) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; (2) if sent by pre-paid first-class post, airmail, or other next working day delivery service, at 9.00 am on the second Business Day after posting (fifth Business Day after posting for airmail) or at the time recorded by the delivery service; (3) if sent by email, on the earlier of (i) the time a return receipt is generated automatically by the recipient's email server or (ii) the time the recipient acknowledges receipt or (iii) 24 hours after transmission unless the sender receives notification that the email has not been successfully delivered, except that if deemed receipt would occur before 9.00 am GMT/BST on a Business Day, it shall instead be deemed to occur at 9.00 am on that day and if deemed receipt would occur after 5.00 pm GMT/BST on a Business Day, or on a day which is not a Business Day, it shall instead be deemed to occur at 9.00 am GMT/BST on the next Business Day.
- (84) Clauses 81 & 82 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **GOVERNING LAW**

- (85) These Terms and Conditions and any Contract and any disputes or claims arising out of its subject matter or formation (including any non-contractual dispute or claim) shall be governed by and construed in accordance with English law.
- (86) Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms and Conditions or any FyfeWeb Contract or its subject matter or formation (including non-contractual disputes or claims).

## **ENTIRE AGREEMENT**

- (87) These Terms and Conditions and any Contract created under them represent the whole agreement and understanding between the Parties relating to the Products and supersedes and extinguishes all other arrangements, agreements, understandings, statements, representations, warranties, undertakings or promises (whether in writing or not) made between, by or on behalf of the parties prior to entering into this Contract except to the extent expressly repeated in a Contract ("pre-contractual statements") including any heads of agreement related to the subject matter hereof.
- (88) Without prejudice to Clause 86, each party warrants to the other that, in entering into a Contract, it has not relied on and shall have no remedy in respect of any pre-contractual statement. Nothing in clauses 86 or 87 is intended to limit either party's liability for fraud or fraudulent misrepresentation.
- (89) The Customer acknowledges and confirms that it has had an opportunity to carry out a thorough due diligence exercise in relation to the supply of the Products, including asking questions it considers relevant and making its own respective enquiries to satisfy themselves as to the accuracy and completeness of any information received including the completeness and accuracy of the Proposal, and has raised all relevant due diligence questions with FyfeWeb before the Commencement Date and has entered into the Contract in reliance on its own due diligence.

## PUBLIC DOCUMENT CONTROL

<b>DOCUMENT TITLE:</b>	CUSTOMER TERMS AND CONDITIONS
<b>DOCUMENT CLASSIFICATION:</b>	NOT PROTECTIVELY MARKED
<b>DOCUMENT OWNER</b>	LEGAL & COMPLIANCE DIRECTORATE
<b>DOCUMENT VERSION:</b>	1.1
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<b>LAST REVISION:</b>	2022-11-11
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NOT PROTECTIVELY MARKED

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