

## Terms of Business



Thanks for visiting us and considering us for your next project.

Please read these Terms of Business and the Proposal carefully and contact us if you are unsure of anything before ordering our Services. YOUR ATTENTION IS PARTICULARLY DRAWN TO THE FOLLOWING CLAUSES: clause 4, 'Introductions', which sets out how we earn commission from introducing you to third parties; and clause 13, 'Limitation of liability', which sets out how we limit our liability to you.

Last updated on 24 November 2022.

### 1. Interpretation

#### 1.1 Definitions:

**Agreement:** the contract between you and us for the supply of the Services, which comprises these Terms of Business, and our Website Terms and Conditions of Use, and (if applicable) any Proposal. The Agreement shall also be called the '**Terms of Service**'.

**Amendments:** changes that we may permit you to make to the Deliverables.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable by you for the supply of the Services by us in accordance with clause 8 ('Charges and payment').

**Consumer:** you are a consumer if you are an individual and you purchase any Services (whether from us or other persons via us) wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Customer:** the person(s) who place the Order for Services, construed as follows: if you are a business Customer, '**you**' means a legal person, and if you are a Consumer, then '**you**' means you in your personal capacity. And '**your**' and '**yours**' shall be interpreted accordingly. You and us are each a 'party', and together, the 'parties'.

**Customer Materials:** all materials, equipment and tools, drawings, specifications and data supplied by you to us, including but not limited to those set out in the Proposal.

**Deliverables:** all documents, products and materials developed by us or our agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) and the Key Deliverables set out in the Proposal.

**Deposit:** a proportion of the Charges quoted for the Services payable in advance of the Services Start Date, as set out in the Proposal; or in respect of a Change Request.

**e-Proposal:** an online quotation for our Services setting out the Particulars. We may opt to use an e-Proposal rather than an email Proposal, and if so, 'Proposal' shall be substituted with 'e-Proposal' in these Terms.

**Estimated Completion Date:** the date by which the Services are estimated by us to be completed, which may be specified in the Proposal, and may differ from the Completion Date.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**License:** the license granted by us to you to use the Supplier IPRs in accordance with terms and conditions of clause 12.2, unless the terms and conditions of said License are otherwise specified in the Proposal.

**License Term:** 3 years, or the day your Plan expires or is cancelled by you, whichever is sooner, unless otherwise specified in the Proposal.

**Milestones:** a date by which a part of the Services are estimated to be completed, as set out in the Proposal.

**Plan:** a retainer, management service, payment plan or subscription (or another ongoing arrangement) for the Services, as detailed in the Proposal, which may be subject to a Notice Period and Minimum Term in accordance with clause 2.11.

**Project:** the project specified in the Proposal.

**Proposal:** an email quotation (or an e-Proposal) for our Services setting out the Particulars.

**Particulars:** particulars for your Project, in addition to these Terms, including but not limited to the following: the Services specification, Plan, Charges, performance dates, payment intervals, License, and any additional or related terms and conditions and information.

**Services:** the services, including without limitation any Deliverables (and, if applicable, Plan or Promotion), as described in clause 2.2, to be provided by us pursuant to the Agreement.

**Services Start Date:** the day on which we are to start provision of the Services, as set out in the Proposal or on our Website, which may be different to the Commencement Date when the Contract comes into existence in accordance with clause 2.7.

**Sites:** our Website including its subdomains, and any other websites or webpages, such as our LinkedIn profiles, pages or groups (or those of our other social media accounts or any other online platforms) used by us.

**Supplier:** Digital Émigré Ltd (trading as 'Digital Émigré'), a limited company registered in England & Wales, company number 11679759, registered office 71-75 Shelton Street, London, United Kingdom, WC2H 9JQ ('we', 'our' and 'us').

**Supplier IPRs:** all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials which may be incorporated in them.

**Terms:** these Terms of Business.

**Terms of Business:** these terms and conditions set out in clause 1 (Interpretation) to clause 30 (Jurisdiction) (inclusive), incorporating our Website Terms and Conditions of Use.

**Terms of Service:** the Agreement.

**Updated Proposal:** an updated version of the Proposal to reflect proposed changes (including additional services requested by you) made to the Proposal in accordance with clause 5; and for all intents and purposes, in the event an Updated Proposal becomes applicable, and to the extent that the context permits, shall be read as Proposal in these Terms.

**Website:** [digitalemigre.com](http://digitalemigre.com) and any subdomains.

## 1.2 Further interpretation:

- (a) Unless expressly provided otherwise in this Agreement, a reference to legislation or a legislative provision:
  - (i) is a reference to it as amended, extended or re-enacted from time to time; and
  - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.
- (d) The Supplier and Customer are each a **'party'**, together the **'parties'**.
- (e) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 2. Our Agreement with you.

**2.1** The **Agreement**, which is also known as our **Terms of Service**, is the contract between you and us for the supply of the Services, which comprises the Proposal, these Terms of Business, and our Website Terms and Conditions of Use.

**2.2** **Services.** We provide the following Services:

- (a) those described in the Proposal or on our Website;
- (b) publish and host multimedia content (**content**) on our Sites; and
- (c) promote the goods, services or digital products of third-party providers (**Providers**) on and off our Sites and connect and Introduce Customers and Providers in return for Commission from Providers. Please see clause 4 for more information.

**2.3** **Information.** By placing an Order and using our Services, you agree that you have read, understand and accept the following important information: <https://digitalemigre.com/legal-notice>.

**2.4** **Placing your order.** You can place an order to purchase Services from us in two ways:

- (a) (**Option 1**) by first contacting us via our Sites to request a quotation; or
- (b) (**Option 2**) via our Website.

**2.5** **Option 1.** If you request a quotation for Services from us, we'll send you a Proposal, along with these Terms. Your acceptance of any Proposal in writing or any counter-proposal that you send us in writing is an offer by you to enter into this Agreement with us on the basis of that Proposal (or counter-proposal, as the case may be) AND these Terms (**Order**).

**2.6** **Option 2.** If you order Services via our Website, your order is an offer by you to enter into this Agreement with us on the basis of the Services specified in your order AND these Terms (**Order**).

**2.7** **Commencement.** The Agreement shall commence and become binding on the parties from the earlier of the following dates (**Commencement Date**):

- (a) the date and time at which we send you written acceptance of your Order (**Order Confirmation**), IF signatures ARE NOT explicitly required by us; or
- (b) the date when it has been signed by both parties, IF signatures ARE explicitly required by us. We reserve the right to waive the condition for signing at any time and give effect to the Agreement in the manner prescribed in clause 2.7 (a) above, and you agree to sign the Agreement at a later date promptly upon request and in any event within 14 days.

**2.8** **Order Confirmation.** For the avoidance of doubt, an Order Confirmation does not need to be explicitly described or referenced as such in order to have legal effect; and in any event there shall be deemed acceptance in respect of Orders made by you (please see clause 2.9 below).

**2.9** **Deemed acceptance.** By accessing our Sites, submitting an Order or requesting us to supply Services you are deemed to accept these Terms and (if applicable) any Proposal, and you agree to pay us the Charges

that apply to the Services. If you do not agree to our Terms of Service, you must not request that we provide any Services.

- 2.10 Term.** The Agreement shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other notice in writing in accordance with clause 2.11 (**Agreement Term**).
- 2.11 Notice Period and Minimum Term.** Unless the notice period for termination (**Notice Period**) and minimum Agreement term (**Minimum Term**) are otherwise specified in the Proposal, including for a Plan, we require:
- (a) not less than 1 months' written notice to terminate the Agreement (**Standard Notice Period**),
  - (b) expiring on or after the expiry of the standard minimum term which is 1 month from the Services Start Date (**Standard Minimum Term**).

### **Cancellation**

#### ***14-day cooling off period for Consumers: see clauses 2.12 to 2.13 (inclusive) below***

- 2.12** As a Consumer, you have the right to change your mind and cancel the Agreement and receive a refund for any Charges paid except for any Services received up until cancellation. To cancel, you need to let us know by email ([hello@digitalemigre.com](mailto:hello@digitalemigre.com)) no later than 14 days after:
- (a) the day we confirm we have accepted your Order, if it is for a service.
  - (b) the day we confirm we have accepted your order, if it is for digital content for download or streaming, although you can't change your mind about digital content once we have started providing it.
  - (c) the day we deliver your product, if it is goods. If the goods are for regular delivery (for example, a subscription), you can only change your mind after the first delivery. If the goods are split into several deliveries over different days, the period runs from the day after the last delivery.
- 2.13** You cannot cancel the Agreement once we have completed the Services, even if any cooling off period is still running.

#### ***General cancellation terms for business Customers and Consumers***

- 2.14** If you are a:
- (a) business Customer, to cancel the Agreement, you must use email only.
  - (b) Consumer, to cancel the Agreement, you must write to us using our email address or postal address in clause 2.12. Please include details of your order to help us to identify it.
- 2.15** Subject to any Notice Period and Minimum Term in accordance with clause 2.11 or any Plan, if you serve notice to cancel the Agreement, we will refund you in full for the price you paid for the Services, by the method you used for payment, however we may deduct from any refund an amount for the supply of the Services provided for the period up to the time when you gave notice of cancellation. The amount we deduct will:
- (a) reflect the terms and conditions and Charges for any Plan that may apply;
  - (b) reflect the amount that has been supplied as a proportion of the entirety of the Agreement; and
  - (c) be based on our rates, as set out on at the time you submit your Order.

### **3. Supply of services**

- 3.1** We shall supply the Services to you from the Services Start Date or as soon as reasonably practicable after said date in accordance with the Agreement.
- 3.2** If the Services Start Date is omitted from our Website or the Proposal for any reason, the Services Start date shall be decided by us entirely at our sole discretion.
- 3.3** We may require you to pay us a Deposit and/or advance payment no later than 7 days before the Services Start Date, unless otherwise specified in or omitted from our Website or the Proposal. We reserve the right to: not provide any Services until any such payment is paid; and adjust the performance dates such as the Estimated Completion Date or the Milestones (if any) accordingly, if there is a delay in receipt of this payment.

- 3.4 Amendments.** You shall be entitled to the type and quantity of Amendments as specified in the Proposal, and if no Amendments are so specified then none shall be permitted, unless otherwise agreed in writing. An amendment is either a minimal change, or a defined permitted change, to the Deliverables; and we shall, entirely at our sole discretion, determine whether any amendments you request constitute an Amendment, or rather a Change or Minor Change as set out in clause 5.
- 3.5** In supplying the Services, we shall:
- (a) perform the Services with reasonable care and skill;
  - (b) use reasonable endeavours to supply the Services, and deliver the Deliverables to you, in accordance with this Agreement in all material respects.
  - (c) use reasonable endeavours to meet the performance dates (if any) specified in the Proposal, and performance dates of any kind shall only apply to this Agreement if they are explicitly set out in the Proposal, unless otherwise agreed by the parties in writing, and nevertheless any performance dates shall be estimates only and time for performance by us shall not be of the essence of this Agreement.
  - (d) (if you are a consumer) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
  - (e) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to us, provided that we shall not be liable under the Agreement if, as a result of such observation, we are in breach of any of our obligations under the Agreement; and
  - (f) take reasonable care of all Customer Materials in our possession and make them available for collection by the Customer on reasonable notice and request, always provided that we may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Agreement.
- 3.6 Descriptions and illustrations.** Any descriptions or illustrations on our Website are published for the sole purpose of giving an approximate idea of the services described in them. They will not form part of the Agreement or have any contractual force.
- 3.7 Compliance with specification.** Subject to our right to amend the specification (see clause 3.8) we will supply the Services to you in accordance with the specification for the Services described in the Proposal, or if no specification is so described, appearing on our Website, at the date of your Order in all material respects.
- 3.8 Changes to specification.** We reserve the right to amend the specification of the Services if required by any applicable statutory or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services, and we will notify you entirely at our sole discretion in advance of any such amendment.
- 3.9 Deliverables.** The Deliverables apply to your business or circumstances as described to us at the time the Services are supplied and may require updating from time to time after delivery. We do not make any representation or warranty or guarantee as to the completeness, accuracy, timeliness or suitability of any part of the Deliverables if your business changes or the circumstances that applied at the time of delivery of the Deliverables no longer apply. We suggest that you get in contact with us the event that any such changes occur.
- 3.10 Onboarding.** At any time you may be required to complete certain onboarding procedures, which may include but are not limited to: an application, Anti-Money Laundering (AML) and now your customer (KYC) checks, other compliance or onboarding procedures and checks (**Onboarding**). You agree to cooperate with us or relevant third-party providers of Onboarding services so that it can be completed promptly. We may require you to complete Onboarding before we start providing any Services. Providers may require that you complete their own Onboarding before they start providing any services.

**3.11 Promotions and content.** From time to time, promotions may apply to our Services or Providers' services (**Promotions**). Promotions apply to selected products and services only and are always subject to corresponding terms and conditions. If said terms and conditions are omitted from our Sites at the time that you place your Order based on a Promotion, we shall provide them to you at the earliest opportunity. We may publish Providers' Promotions and content on our sites. Providers' Promotions and content are subject to change and there may be a delay in reflecting said changes on our Sites. If there is any conflict between a Provider's Promotions, including pricing, on our Sites and their website, the Provider's website Promotions shall prevail to the extent that there is a conflict. Promotions and content published by us does not constitute an offer to enter into contract with us or any person. If anything is unclear or you need assistance relating to our Promotions or content then please contact us.

**3.12 Language.** Unless otherwise agreed, our content and any Deliverables are produced in US English.

#### **4. Introductions**

**4.1** The following definitions apply to clauses 4.1 to 4.9 (inclusive):

- (a) **'Business Day'**: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- (b) **'Introduction'** and **'Introduction Date'**: you are deemed to be Introduced by us to any particular Customer on the earliest of the following dates/events:
  - (i) from the date that they are first identified in our communication with you; or
  - (ii) from the date that they are first identified in communication between you and one of our agents, subcontractors, consultants and employees; and **'Introduce'**, **'Introduces'**, **'Introducing'** and **'Introduced'** shall be interpreted accordingly.
- (c) **'Introduction Period'**: for each Customer, from the Introduction Date until 1 year after the date of termination of the Agreement.
- (d) **'Payments'**: any payments made or due to be made by Customers to you for services under a Relevant Contract, or the monetary equivalent thereof if any payments are based on non-monetary consideration.
- (e) **'Customer'**: a person to whom you have not at any time previously sold your products or services to and with whom you have not been in bona fide negotiations in the six months before the Introduction Date.
- (f) **'Relevant Contract'**: a contract entered into during the Introduction Period between you and a Customer who was Introduced by us.

**4.2 Commission entitlement.** We shall be entitled to Commission if a Customer Introduced by us enters into a Relevant Contract.

**4.3 Commission.** The amount of Commission payable shall be at the rate of 10% (or any other amount agreed in writing from time to time) of Payments (**'Commission'**). To illustrate an example for clarity: if the Payments under a Relevant Contract (or numerous Relevant Contracts) total £50,000 or more, the Commission will be £5,000 (five thousand pounds).

**4.4 Your duty to disclose Commission data.** Upon request you shall promptly notify us in writing by email of the following:

- (a) the date you enter into a Relevant Contract;
- (b) the amount of the payments due for services under it; and
- (c) the dates on which payments for such services are payable;

and in any event no later than 3 Business Days after you enter into such Relevant Contract or following a request from us for said information.

**4.5 Commission statement.** Upon request you shall within 7 days of the end of the month to which the corresponding Payments relate or following a request by us send to us a written statement setting out, in respect of such month, and in respect of each Relevant Contract:

- (a) the Commission payable to us;
- (b) the Payments and details of any default or outstanding sums; and
- (c) how the Commission has been calculated, including details of any applicable valuation and all deductions required by law made in determining Payments.

**4.6 Due date for Commission.** All Commission payable shall be due to us (whether invoiced or not) within 14 days of the end of the month to which the corresponding Payments relate. If Payments under any Relevant Contract are in instalments then Commission shall be calculated and paid on such instalments.

**4.7** If you do not want us to Introduce you to Customers, please let us know in your Order, or notify us by email at any time.

**4.8** We are not a party to any contract or dealings between you and any person, whether or not they are Introduced by us.

#### ***Introductions made to us by you***

**4.9** We may agree to pay you a Commission for Introducing Customers to us, subject to the following conditions: you sign (or execute) our introduction agreement; and you confirm your acceptance of our introduction policy and procedure.

**4.10** We may entirely at our sole discretion in writing waive any condition in clause 4.9, in which case the same definitions and terms and conditions in clauses 4.1 to 4.8 (inclusive) (which are to be deemed modified to the minimum extent necessary to give effect to our intention in this clause 4.10) shall apply to Introductions of Customers that you make to us.

**4.11** In any event, we shall only pay you Commission if we receive payment for our charges under the Relevant Contract to which the applicable Commission relates.

#### **5. Changes and additional Services**

**5.1** Either party may propose changes to the scope, execution or timing of the Services (including additional services requested by you), but no such proposed changes shall come into effect until:

- (a) minor changes or additional services (**Minor Changes**) have been agreed between the parties by email; or
- (b) in the case of more substantial changes (**Changes**), and certain Minor Changes (determined entirely at our sole discretion), an **Updated Proposal** has been agreed between the parties by email AND the procedure in this clause has been followed.

**5.2** An Updated Proposal shall be a Proposal setting out the proposed Changes and the effect (if any) that those changes will have on:

- (a) the Services;
- (b) the Charges;
- (c) the timetable of the Services; and
- (d) any of the terms of this Agreement.

**5.3** If we wish to make Changes to the Services, we shall provide an Updated Proposal to the Customer.

**5.4** If you wish to make changes to the Services:

- (a) you shall notify us and provide as much detail as we reasonably require of the proposed Minor Changes or Changes, including the timing of the proposed changes (**Change Request**); and
- (b) we may, as soon as reasonably practicable after receiving the Change Request at clause 5.4 (a), and entirely at our sole discretion, accept your Change Request in writing or provide you with an Updated Proposal.

**5.5** For all intents and purposes, the contracting procedure and mechanism set out in clause 2 shall apply to this clause 5, applied accordingly as follows:

- (a) a Change Request made by you or your acceptance of an Updated Proposal (or any counter-proposal that you send us) in writing, shall constitute an Order;
- (b) the date and time at which we send you written confirmation that we accept your Order is when a change under this clause 5 shall take effect; and

- (c) by submitting an Order for a Change Request and requesting us to supply Services you are deemed to accept the these Terms and any Updated Proposal, and you agree to pay us the Charges in return for us supplying you with the Services.

**5.6** If the parties:

- (a) are unable to agree changes under this clause 5 in writing, then no changes shall be made to the Agreement;
- (b) agree to an Updated Proposal, this Agreement shall be amended accordingly.

**5.7** Please note that due to the time- and resource-intensive nature of certain Change Requests given the negotiations and communication involved, we reserve the right to make reasonable variations to the following entirely at our sole discretion, regardless of whether agreement is reached under this clause 5:

- (a) our Charges to account for the time that we spend, based on our rates specified in the Proposal, or if not so specified in the Proposal, on our Website, or some other rates that we shall provide to you that are relevant to your Change Request; and
- (b) elements of the Agreement, including but not limited to the Deposit, Plan, License, payment intervals, performance dates, the Services and Deliverables.

**6. Completion**

**6.1** When we have completed the Services we shall notify you in writing, on which date (**Completion Date**) we shall be deemed to have completed the Services and discharged all our obligations under the Agreement (**Completion**), and we shall send you our final invoice(s) on or around the Completion Date.

**6.2** If you believe that any Services are outstanding, or you'd like to request any permitted Amendments, you must provide us by email within 7 days of the Completion Date a checklist of items that in your opinion are not complete and/or your proposed Amendments, along with as much detail as we reasonably require of those items (**Completion Checklist**).

**6.3** If you do not provide the Completion Checklist within 7 days of the Completion Date, or some other period agreed between the parties in writing, you will be deemed to have accepted that Completion occurred on the Completion Date.

**6.4** If applicable, as soon as reasonably practicable after receiving the Completion Checklist from you, we shall provide a response in writing and set out any items that we believe are a Change Request.

**6.5** We shall complete the items in the Completion Checklist that are agreed in writing between the parties as being outstanding Services (**Remaining Services**) as soon as reasonably practicable after said written agreement is reached and we are provided with as much detail (including but not limited to further Customer Materials) as we reasonably require in connection with the Remaining Services.

**6.6** We may charge for the time that we spend to negotiate the items in the Completion Checklist to the extent that said items are in effect a Change Request.

**6.7** For the avoidance of doubt, the provisions of this clause 6 are without prejudice to our rights and remedies under this Agreement, such as those set out in clause 8 ('Charges and payment').

**6.8** When we have completed any Remaining Services we shall notify you in writing, on which date (**Completion Date**) we shall be deemed to have completed the Services and discharged all our obligations under the Agreement (**Completion**), and we shall send you our final invoice(s) on or around the Completion Date.

**6.9** The procedure and mechanism to effect Completion in this clause 6 shall be used until the parties agree Completion.

**6.10** If the parties cannot agree the Remaining Services or Completion either party require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 27 (Multi-tiered dispute resolution procedure).



## **7. Customer's obligations**

### **7.1** You shall:

- (a) co-operate with us in all matters relating to the Services;
- (b) provide, for us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to your premises, office accommodation, data and other facilities as required by us;
- (c) provide, in a timely manner, such information as we may require from time to time, and ensure that it is accurate and complete in all material respects, including but not limited to the Customer Materials;
- (d) inform us of all health and safety and security requirements that apply at any of your premises. If you wish to make a change to those requirements which will materially affect provision of the Services, you can only do so via the change control procedure set out in clause 5 (Changes); and
- (e) use our Website and other Sites in accordance with our Website Terms & Conditions of Use and Acceptable Use Policy (available here: <https://digitalemiqre.com/terms-of-service>).

### **7.2** If the performance of our obligations under the Agreement is prevented or delayed by any act or omission of yours, your agents, subcontractors, consultants or employees, we shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay;
- (c) be entitled to recover any additional costs, charges or losses we sustain or incur that arise directly or indirectly from such prevention or delay; and
- (d) be entitled to charge additional Charges during the period of prevention or delay.

## **8. Charges and payment**

### **8.1** In consideration for the provision of the Services, you shall pay us the Charges in accordance with this clause 8.

### **8.2** Charges are the prices quoted on our Website, in any price list supplied to you, or (if applicable) in a Proposal at the time you submit your Order. Prices in any price list or Proposal take precedence over those on our Website.

### **8.3** We reserve the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

### **8.4** It is always possible that, despite our reasonable efforts, some of the Services on our Website may be incorrectly priced. Where the correct price for the Services is less than the price stated on our Website, we will charge the lower amount and if the correct price for the Services is higher than the price stated on our Website, we will contact you in writing as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Services at the correct price or cancelling your Order. We will not process your Order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. However, if we mistakenly accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we reserve the right to cancel supply of the Services and refund you any sums you have paid.

### **8.5** All amounts payable by you exclude amounts in respect of value added tax (VAT), which you shall additionally be liable to pay to us at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

### **8.6** Payment for the Services is in advance, unless otherwise agreed.

- 8.7** We shall invoice you for the Charges in advance or at the payment intervals specified on our Website or any Proposal, including for any Plan, or on or around the Completion Date. If no intervals are so specified we shall invoice you at the end of each month for Services performed during that month, unless otherwise agreed in writing.
- 8.8** You shall pay each invoice due and submitted to you by us, within 7 days of receipt, to a bank account nominated in writing by us from time to time.
- 8.9** If you fail to make any payment due to us under the Agreement by the due date for payment, then, without limiting our remedies under clause 14 (Termination):
- (a) you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - (b) we may suspend all Services and any License until payment has been made in full.
- 8.10** All amounts due under the Agreement from you to us shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. Warranties**
- 9.1** You warrant and undertake that:
- (a) you are fully entitled and have the authority to enter into the Agreement, either on your own behalf or for and on behalf an organisation, and have the legal capacity to do so freely;
  - (b) **Customer Materials** will to the best of your knowledge and belief be accurate, up to date, genuine and truthful and will not breach any contract, duty of confidence, Applicable Data Protection Laws, the Official Secrets Acts 1911-1989, other legislation relating to national security, constitute a contempt of court, or be obscene, defamatory or blasphemous;
  - (c) you shall keep confidential and shall not disclose to any third party any photographs or other material containing or relating to our personnel or affairs; and
  - (d) you shall seek your own independent advice and/or carry out your own due diligence on any Providers proposed or Introduced by us, taking into account your specific circumstances and needs, before making any decisions. In any event our content and Introductions are not a substitute for your own due diligence, and you agree to satisfy yourself that any Providers are suitable for your requirements including in relation to price, quality, suitability, qualifications and competence before entering into a contract with any Provider or giving us your instructions.
- 10. Indemnity**
- 10.1** To the fullest extent permitted by law, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the us arising out of or in connection with:
- (a) any breach by you of the warranties contained in these Terms; and
  - (b) the enforcement of the Agreement.
- 10.2** At the request of us and at your own expense, you shall provide all reasonable assistance to enable us to resist any claim, action or proceedings brought against us as a consequence of that breach.
- 10.3** This indemnity shall apply whether or not we have been negligent or at fault.
- 11. Data protection**
- 11.1** For the purposes of this clause 11, the following definitions apply.  
Applicable Data Protection Laws: means:
- (a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.

- (b) To the extent the EU GDPR applies, the law of the law of the European Union or any member state of the European Union to which we are subject, which relates to the protection of personal data.

**Customer Personal Data:** any personal data which we process in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

**EU GDPR:** means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Supplier Personal Data:** any personal data which we process in connection with this Agreement, in the capacity of a controller.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 11.2 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws.
- 11.3 The Customer consents to, (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by us in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of our privacy policy available at <https://digitalemigre.com/privacy-policy/> (**Privacy Policy**). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 11.4 Without prejudice to clause 18.2, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to us and lawful collection of the same by us for the duration and purposes of this Agreement.

## 12. Intellectual property

- 12.1 We and our licensors shall retain ownership of all Intellectual Property Rights and Supplier IPRs; and you and your licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials, unless otherwise agreed in writing.
- 12.2 Subject to clause 12.3 and clause 12.6, we grant you, or shall procure the direct grant to you of, a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable, non-sub-licensable, revocable licence to use the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in your business during the License Term (**License**). If you are a Consumer then 'your business' means your Project.
- 12.3 The License is personal to you, is for your personal use, and only applies to the Project specified in the Proposal. For the avoidance of doubt, you do not have the right to use the Supplier IPRs in connection with any commercial use or project other than permitted by this Agreement, unless otherwise agreed in writing.
- 12.4 You grant us a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Agreement for the purpose of providing the Services to you in accordance with the Agreement.
- 12.5 You:
  - (a) warrant that the receipt and use of the Customer Materials in the performance of this Agreement by us, our agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - (b) shall indemnify us in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim brought against us, our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Customer Materials.
- 12.6 Materials and content on our Website do not constitute Deliverables, and the permission we give you to access and consume content and materials on our Website is distinct from any License. We do not grant

you a License in respect of any of our Intellectual Property Rights in our content and materials on our Website. We are the owner or the licensee of all Intellectual Property Rights in our Website, and in the material published on them. Those works are protected by copyright laws and treaties around the world. All such rights are reserved. You may print off one copy, and may download extracts, of any page(s) from our Website for your personal use and you may draw the attention of others to content posted on our Website. You must not modify the paper or digital copies of any materials you have printed off or downloaded in any way, and you must not use any illustrations, photographs, video or audio sequences or any graphics separately from any accompanying text. Our status (and that of any identified contributors) as the authors of content on our Website must always be acknowledged (except where the content is user-generated). You must not use any part of the content on our Website for commercial purposes without obtaining a licence to do so from us or our licensors. By accessing and using our Website you agree to adhere to the terms and conditions of this clause 12.6, and our Website Terms and Conditions of Use (and any Acceptable Use Policy which we may publish to our Website from time to time), howsoever called, which apply to your use of our Website (the terms and conditions of which are incorporated into this Agreement). To the fullest extent permitted by law, and to the extent that your adherence to the provisions of these terms of use does not cause you to be in breach of any, terms and conditions of use of any of any Sites, the terms and conditions of this clause 12.6 (including any terms and conditions incorporated into it) apply to your use of those Sites too.

### **13. Limitation of liability**

- 13.1** Unless otherwise specified or notified to you in writing, we are not insured for providing the Services.
- 13.2** References to liability in this clause 13 include every kind of liability arising under or in connection with the Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 13.4** Nothing in this clause 13 shall limit the Customer's payment obligations under the Agreement.
- 13.5** Nothing in the Agreement shall limit the Customer's liability under clause 13.6 of the Agreement.
- 13.6** Nothing in the Agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.7** Subject to clause 13.3 (no limitation in respect of deliberate default), clause 13.4 (no limitation on customer's payment obligations), clause 13.5 (liability under identified clauses) and clause 13.6 (liabilities which cannot legally be limited), this clause 13.7 sets out the types of loss that are wholly excluded:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 13.8 Limitation of liability.** Subject to clause 13.6, our total liability to you arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to 200% of the total Charges paid and received under the Agreement (or some other sum specified in the Proposal, if applicable).

- 13.9** We have given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 13.10** Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

#### **Consumers**

- 13.11 We are responsible to you for foreseeable loss and damage caused by us.** Subject to clause 13.8, if we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking the Agreement or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Agreement was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 13.12 We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the products, and for defective products under the Consumer Protection Act 1987
- 13.13 When we are liable for damage to your property.** If we are providing services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the Services.
- 13.14 When we are liable for damage caused by defective digital content.** If defective digital content which we have supplied damages a device or digital content belonging to you and this is caused by our failure to use reasonable care and skill we will either repair the damage or pay you compensation. However, we will not be liable for damage which you could have avoided by following our advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us.
- 13.15** If you are a Consumer we only supply the Services and Deliverables for to you for domestic and private use. If you use the Services or Deliverables for any commercial, business or re-sale purpose our liability to you will be limited as set out in clauses 13.1 to 13.10 (inclusive).
- 13.16** Notwithstanding clauses 13.11 to 13.14 (inclusive), clauses 13.1 to 13.10 (inclusive) apply to you to the fullest extent permitted by law. In other words, we are trying to keep our liability to you under this Agreement to the minimum level that the law allows us to.

#### **General**

- 13.17 Disclaimers.** To the fullest extent permitted by law, our Website Legal Notice and any additional disclaimers in our Proposal and on our Sites are incorporated into the Agreement and apply in accordance with the limitations and qualifications in this clause 13.
- 14. Termination and consequences of termination**
- 14.1** Without affecting any other right or remedy available to either party, this Agreement shall terminate automatically, without further action being necessary by the parties, on the later of the following dates:
- (a) Completion;
  - (b) termination or expiry of the Plan; or
  - (c) termination or expiry of the License.
- 14.2** Without affecting any other right or remedy available to it, either party to the Agreement may, without cause, terminate this Agreement in accordance with clause 2.11.

- 14.3** Without affecting any other right or remedy available to it, either party to the Agreement may terminate it with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
  - (c) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (e) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation.
- 14.4** Without affecting any other right or remedy available to us, we may terminate the Agreement and any License with immediate effect by giving written notice to you if:
- (a) you fail to pay any amount due under this Agreement on the due date for payment and remain in default not less than 14 days after being notified in writing to make such payment ; or
  - (b) there is a change of control of the Customer.
- 14.5** Without affecting any other right or remedy available to us, we may terminate the License with immediate effect by giving written notice to you if:
- (a) you commit a material breach of any conditions of the License which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so; or
  - (b) you repeatedly breach any of the conditions of the License in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 14.6 Obligations on termination, and survival.** On or after termination or expiry of the Agreement for whatever reason:
- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;
  - (b) you shall, subject to the conditions of the License, on request return to us and/or cease to use any of the Deliverables or other materials in which our Intellectual Property Rights subsist;
  - (c) each party shall, subject to the License, on request return to the other party all equipment, materials and property belonging to and supplied by that other party in connection with the Agreement;
  - (d) each party shall on request return to the other party all documents and materials (and any copies) containing the other party's confidential information and, to the extent possible, erase any such confidential information from its computer systems;
  - (e) the following clauses shall continue in force and effect: clause 1 (Interpretation), clause 15 (Non-solicitation), clause 12 (Intellectual property), clause 18 (Confidentiality), clause 13 (Limitation

of liability), clause 14.6 (Obligations on termination, and survival), clause 21 (Waiver), clause 22 (Severance), clause 28 (Conflict, ambiguity and omissions), clause 27 (Multi-tiered dispute resolution procedure), clause 29 (Governing law), clause 30 (Jurisdiction) and any other provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement; and

- (f) Termination or expiry of the Agreement shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **15. Non-solicitation**

**15.1** You shall not, without our prior written consent, at any time from the date of this Agreement to the expiry of 12 months after the termination or expiry of this Agreement, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of ours in the provision of the Services, including professionals such as lawyers that we introduce to you.

**15.2** Any consent given by us in accordance with clause 15.1 shall be subject to you paying to us a sum equivalent to 20% of the then current annual remuneration of our employee, consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by you to that employee, consultant or subcontractor.

## **16. Force majeure.**

**16.1** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## **17. Assignment and other dealings**

**17.1** You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under this Agreement, without our prior written consent.

**17.2** We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under this Agreement.

**17.3** We may novate this Agreement (namely to transfer all our rights and obligations under the Agreement) at any time to any person, and you agree to give effect to the novation agreement promptly upon request and in any event within 14 days by way of signature and your failure to do so gives the Supplier the right to suspend the Services or any License, or Terminate the Agreement subject to these Terms.

## **18. Confidentiality**

**18.1** Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 18. For the purposes of this clause 18, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

**18.2** Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 18.3** Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 19. Entire agreement**
- 19.1** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter (business Customers only).
- 19.2** Each party acknowledges that in entering into the Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 19.3** This clause 19 applies in full to business Customers and to the fullest extent permitted by law in respect of Consumers.
- 20. Variation**
- 20.1** Subject to clause 20.2, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.2** We reserve the right to modify these Terms from time to time without notifying you. Modified Terms will be posted on our Website or sent to you and we recommend that you view them regularly to ensure you are aware of any changes. Changes to the Terms will be deemed to have been accepted by you if you continue to use our Services after they are published to our Website or sent to you.
- 21. Waiver**
- 21.1** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 21.2** A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 22. Severance**
- 22.1** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22.1 shall not affect the validity and enforceability of the rest of the Agreement.
- 23. Notices**
- 23.1** Except as provided in clause 2.14, any notice or other communication given by one of us to the other under or in connection with the Agreement must be in writing by email to the email addresses used by the parties for the Proposal correspondence, or another email address notified by either party to the other.
- 23.2** Any notice or communication shall be deemed to have been received:
- (a) if delivered personally, on signature of a delivery receipt, or at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 23.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.



- 23.3** In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email, that such email was sent to the specified email address of the addressee.
- 23.4** This clause 23 does 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.
- 24. Third party rights**
- 24.1** Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 24.2** The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.
- 25. Counterparts**
- 25.1** In the event that we require signature (or execution) of this Agreement to give legal effect to it, it may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 25.2** Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the Agreement thus made, each party shall on request provide the other with the "wet-ink" hard copy original of their counterpart.
- 25.3** No counterpart shall be effective until each party has executed and delivered at least one counterpart.
- 26. No partnership**
- 26.1** Nothing in any of our materials or content on our Sites or in any Agreement between you and us is intended to, or shall be deemed to, establish any partnership or joint venture between you and us, constitute any party the agent of the other party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 26.2** Nothing in any of our materials or content on our Sites or in communication with you or in any Agreement between you and us is intended to, or shall be deemed to, establish any partnership or joint venture between us and any Provider or any other person, constitute us an agent of Providers or other persons or vice versa, or authorise us or Providers or other persons to make or enter into any commitments for or on behalf of each other.
- 26.3** For the avoidance of doubt, reference to the terms 'partner' or 'partnership' howsoever written in any content or materials on our Sites or stated in communication with you, in respect of any person, are simply terms used for marketing purposes and have no legal effect under the Partnership Act 1890 or otherwise.
- 27. Multi-tiered dispute resolution procedure**
- 27.1** If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the manager of the Customer and manager of the Supplier shall attempt in good faith to resolve the Dispute;
  - (b) if the manager of the Customer and manager of the Supplier are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to the director of the Customer and director of the Supplier who shall attempt in good faith to resolve it; and
  - (c) if the director of the Customer and director of the Supplier are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by

mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 21 days after the date of the ADR notice.

**27.2** The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 30 (Jurisdiction) which clause shall apply at all times.

**27.3** If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 30 (Jurisdiction).

## **28. Conflict, ambiguity and omissions**

**28.1** If there is any conflict or ambiguity between the provisions or Particulars of the documents/items listed in subclauses (a)–(d) then a provision or Particular contained in one higher in the list shall have priority over one contained in one lower in the list.

- (a) Proposal;
- (b) Our Website;
- (c) these Terms;
- (d) Website Terms and Conditions of use.

**28.2** For the avoidance of doubt, in relation to the Particulars for a specified Service or Promotion:

- (a) if there is any conflict or ambiguity between any of the standard Particulars of these Terms and those of the Website, the Particulars on the Website shall prevail;
- (b) if there is any conflict or ambiguity between any of the Particulars of the Website and the Particulars of any Proposal, the Particulars of that Proposal shall prevail;
- (c) if there is any conflict or ambiguity between any of the standard Particulars of these Terms and those of any Proposal, the Particulars in that Proposal shall prevail;
- (d) if any Particulars are omitted from a Proposal, those stated on our Website shall apply;
- (e) if any Particulars are omitted from the Proposal and Website, the standard Particulars in these Terms shall apply; and
- (f) the exclusion or omission of any documents/items listed in subclauses 28.1(a)–28.1(d) for any reason, shall not affect the formation, validity or enforceability of the Agreement.

## **29. Governing law**

**29.1** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

## **30. Jurisdiction**

**30.1** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.