

CONTENTCAL LIMITED (CCL) TERMS AND CONDITIONS

TERMS AND CONDITIONS

Version in effect from May 2018.

1 Interpretation

In these Conditions, unless the context otherwise requires:

Agreement	means the contract formed by the acceptance of the Order Form (subject to these Conditions) by CONTENTCAL LIMITED ;
Associate	means, in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that party from time to time;
CCL	CONTENTCAL LIMITED , with registered company number 08723333, whose registered office is at Tagwright House, 35-41 Westland Pl, Hoxton, London N1 7LP
Business Day	means a day other than Saturday, Sunday and public holidays when clearing banks generally are open for business in London;
Client	means the customer identified on an Order Form submitted to CCL by means of the Website or order letter for the provision of Services by CCL to that customer;
Commencement Date	means the date specified as the commencement date on the Order Form;
Competent Authority	means any person having regulatory or supervisory authority over any part of the business of either party or a Client (as applicable), including any court of competent jurisdiction;
Conditions	means these terms and conditions as amended from time to time by CCL, which shall apply to all Services and Orders and any other agreements for the provision of services by CCL to the Client unless expressly agreed otherwise;
Content	means the information and social media content in any form submitted by the Client to CCL in the course of receiving the Services;
Control	means that a person owns directly or indirectly more than 50% of the shares or securities of the other person representing the right to vote on all or substantially all matters including the election of directors and Controls and Controlled shall be interpreted accordingly;
Data Protection Legislation	means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation implementing the Data Protection Directive 95/46/EC of 24 October 1995 or the Privacy and Electronic Communications Directive 2002/58/EC of 12 July 2002;
Database	means the central database of the Client's content compiled from Content and Data submitted by the Client to CCL;
Deliverables	means any advice, reports, charts, diagrams, publications, graphics, content or other deliverables of any kind and in any media produced for the Client by CCL in the performance of the Services;
Fees	means the fees set out on the Order Form, calculated by reference to CCL then current price list for such services set out in the Website or otherwise agreed between CCL and the Client;
Force Majeure Event	means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations under these Conditions, but inability to pay is not a Force Majeure Event;
Good Industry Practice	means, in relation to any undertaking and any circumstances, the exercise of that degree of care and skill which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;
Initial Period	means the initial period set out on the Order Form;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design right, get-up, database right, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future;

	(e) to which the Party licensing those rights or its licensor are or may be entitled; and
	(f) wherever existing;
Operating Year	means the period of 12 months from the Commencement Date and each subsequent 12 month period commencing on the anniversary of the Commencement Date;
Order Form	means Client's order for Services in an online order form or order screens on the Website which becomes binding once accepted by CCL and notified to the Client, or an order form or letter prepared by CCL and countersigned by the Client;
Party	means either CCL or the Client and Parties means both CCL and the Client;
Representatives	means the representatives appointed by each party whose details are set out on the Order Form, or their successors as may be notified to the other party;
Sales Tax	means any sales, purchase or turnover tax as may be applicable in any relevant jurisdiction, including, without limitation, value added tax chargeable under or pursuant to legislation implementing the EC Sixth Directive (77/388/EEC);
Services	means the digital marketing and related services set out in the Order Form or as may be agreed between the Parties from time to time;
Term	means the Initial Period set out on the Order Form and any extension of that term in accordance with Condition 6;
Third Party IPR	means any content or other Intellectual Property Rights provided by third party suppliers, where such third parties have been specifically identified by CCL;
Website	means www.astp.co , www.contentcal.io , and any other linked CCL website pages used to deliver the Services or provide information in respect of the same.

1.1 unless the context otherwise requires:

1.1.1 each gender includes the others and the singular includes the plural and vice versa;

1.1.2 references to conditions are to conditions of these Conditions;

1.1.3 'including' means including without limitation;

1.1.4 references to persons include individuals, unincorporated bodies, government entities, companies and corporations;

1.1.5 condition headings do not affect their interpretation;

1.1.6 references to legislation:

(a) include any secondary or subordinate legislation made under or pursuant to that legislation; and

(b) exclude any re-enactment or modification of that legislation made on or after the date of these Conditions to the extent they make any Party's obligations more onerous;

1.1.7 writing includes emails and electronic communications delivered by the Services, Software or Website and other permanent forms;

2 Service

2.1 Subject to the Client's payment of the Fees, CCL shall perform the Services for the Client.

2.2 The Client's right to use the Services includes the right to make the Services available to its Associates (as identified in the Order Form or otherwise agreed in writing by CCL) provided that the Client:

2.2.1 remains liable for the acts and omissions of its Associates as if they were its own; and

2.2.2 shall cease to make the Service available to any party immediately on that party ceasing to be an Associate.

2.3 References in these Conditions to the Client shall include its Associates authorised in accordance with clause 2.2 above.

2.4 CCL shall provide the Services to the Client in accordance with the terms of these Conditions. CCL shall be entitled to amend these Conditions from time to time. If amendment of the Conditions has (or would have) a material adverse effect on the rights or obligations of the Client, the Client shall be entitled to reject the amendment within 5 Business Days of notification, in which case it shall not take effect until the end of the Initial Term or the current applicable extended term under Condition 6 (Term). The Client's continued use of the Services without such notification of rejection shall be deemed to constitute its acceptance of the notified amendments.

3 Fees and payment

3.1 CCL shall invoice in respect of the Fees as agreed in the Order Form (or, where not specified, following the execution of the Order Form).

- 3.2 All Fees must be paid in pounds sterling using a valid payment type. The Client may provide automated payment instructions for renewals of the Fees each month or year, as applicable.
- 3.3 Invoices issued by CCL shall be payable within thirty (30) days after their date. CCL shall include sufficient details evidencing the calculation of the Fees in each invoice submitted.
- 3.4 CCL reserves the right to refuse to provide and/or suspend the Services if the Client fails to pay CCL's undisputed Fees in accordance with the terms of this Agreement.
- 3.5 If CCL provides, at the request of the Client, any additional advisory or other services in connection with the Services, the Client shall become liable to pay for such services at CCL's then applicable rates.
- 3.6 If any Sales Tax is properly chargeable in respect of any supply made by CCL under these Conditions, the Client shall pay the amount of that Sales Tax to CCL against issue of a proper Sales Tax invoice by CCL.
- 3.7 Without limiting Condition 3.1, each amount stated as payable by the Client under this agreement is exclusive of Sales Tax (if any) which shall be added to the amounts specified in this Agreement at the prevailing rate(s).
- 3.8 CCL shall be entitled to amend the Fees from time to time, which shall be effective for all new orders for Services following the date of notification by CCL (including publication on the Website).
- 3.9 Where sums due under this Agreement are not paid in full by the due date, CCL may, without limiting its other rights, charge interest on such sums at a rate of 4% percentage points a year above the base rate of Barclays Bank Plc from time to time in force.
- 3.10 Interest will:
 - 3.10.1 accrue on a daily basis; and
 - 3.10.2 apply from the due date for payment until actual payment in full, whether before or after judgment.

4 Undertakings by the Client

- 4.1 The Client for itself and on behalf of each Associate undertakes in favour of CCL as follows:
 - 4.1.1 to provide such information, documentation and/or access to staff as may reasonably be required by CCL in the performance of the Services;
 - 4.1.2 not to remove, suppress or modify in any way any proprietary markings including any trade mark or copyright notice on the Website and/or Deliverables;
 - 4.1.3 to be solely responsible for providing and maintaining all computer equipment and software and telecommunications connectivity necessary for the Client to access the Services;
 - 4.1.4 not to re-sell, re-market or otherwise commercially exploit any portion of the Services or Deliverables unless specifically permitted in writing by CCL;
 - 4.1.5 to be solely responsible for any Content submitted by the Client to CCL in connection with the Services;
 - 4.1.6 to be responsible for and at its own cost:
 - (a) obtain and maintain all necessary permissions, consents and licences to enable it to use the Services in the countries in which the Client accesses the Services;
 - (b) comply with all applicable conventions and codes of practice and all applicable laws, regulations, and other similar forms of legislation in all relevant jurisdictions that may relate to the Client's use and access of the Services;
 - 4.1.7 to take all necessary precautions to ensure that Content supplied to CCL is:
 - (a) accurate; and
 - (b) is free from viruses by scanning the Content in accordance with Good Industry Practice.
- 4.2 The Client shall, at its own cost, be responsible for obtaining (or obtaining relief from any requirements for) all regulatory approvals which Client is required to obtain.
- 4.3 CCL is not obliged to monitor or moderate Content. Any Content or other communications submitted by the Client must conform to standards of accuracy, decency and lawfulness, which shall be applied in CCL's discretion, acting reasonably. In particular, the Client warrants (on behalf of itself, its Associates) that any Content or other communications submitted to CCL are:
 - 4.3.1 its own original work and lawfully submitted;
 - 4.3.2 factually accurate or the Client's own genuinely held belief;
 - 4.3.3 provided with the necessary consent of any third party;
 - 4.3.4 not defamatory or likely to give rise to an allegation of defamation;

- 4.3.5 not offensive, obscene, sexually explicit, discriminatory or deceptive; and
- 4.3.6 unlikely to cause offence, embarrassment or annoyance to others.
- 4.4 The Client hereby confirms that it does not consider itself to be a consumer and is not acting as a consumer for the purposes of the Consumer Protection Act 2015 or any other consumer law or regulations in the United Kingdom.
- 5 Data processing**
- 5.1 The Client will provide CCL with the Content and such instructions and other information as CCL reasonably needs to perform the Services.
- 5.2 CCL will:
 - 5.2.1 process data and other information supplied by the Client ("Data") solely to provide the Services under these Conditions and in accordance with the Client's lawful and reasonable written instructions;
 - 5.2.2 comply with its obligations under the Data Protection Legislation concerning the implementation of appropriate organisation and technical security measures to safeguard the Data;
 - 5.2.3 not disclose the Data or other information supplied by the Client to any third party other than on the Client's written instructions or as required by law (save where such data has been anonymised and/or aggregated and used for statistical or analytical purposes); and
 - 5.2.4 immediately forward to the Client communications from data subjects, regulatory bodies and other third parties concerning the Data and not respond to or act on such communications without the Client's prior agreement.
- 5.3 The Client warrants that it has the authority to provide the Personal Data to CCL in connection with the performance of the Service (whether contained in the Content, Data or otherwise) and that the Personal Data provided to CCL has been processed in accordance with Data Protection Legislation.
- 5.4 If any action or proceeding is brought against CCL in respect of any alleged infringement of any Data Protection Legislation arising out of a breach of Condition 5.3, the Client shall indemnify CCL from and against all costs, damages, liabilities, and losses agreed to be paid by way of settlement or compromise by, or finally awarded against CCL as a result of or in connection with such action or proceeding.
- 6 Term**
- This Agreement commences on the Commencement Date, and unless terminated earlier in accordance with the terms of these Conditions, remain in force for the Initial Period and will continue thereafter unless and until the Client gives CCL at least ninety (90) days' written notice of termination.
- 7 Intellectual Property Rights**
- 7.1 Database Intellectual Property Rights**
- The Client acknowledges that all Intellectual Property Rights in the Database are and shall at all times remain the property of CCL.
- 7.2 Content Intellectual Property Rights**
- 7.2.1 All Intellectual Property Rights in the Content and all amendments or additions to the Content belong to the Client. CCL may use all such rights only under these Conditions.
- 7.2.2 The Client grants CCL a licence to: (i) use, edit, create databases from, copy and store the Content solely to perform, and for the Term of, these Conditions; and (ii) subject to aggregation and anonymisation, to incorporate information relating to the Content and the Client's use of the Services into statistical analyses, knowhow and for use in service development and marketing purposes.
- 7.2.3 CCL hereby assigns (and will ensure that its employees or subcontractors assign) to the Client all Intellectual Property Rights which currently, or may in future, exist in the Content and any amendments or additions to the Content and, in each such case, so far as any of those vest in CCL, its employees or subcontractors.
- 7.3 Deliverables**
- 7.3.1 CCL may use any Intellectual Property Rights that it owns or licences in the performance of the Services (**Materials**) and incorporate the same into the Deliverables. Notwithstanding the delivery of any Deliverables, CCL retains all Intellectual Property Rights in the Materials (including any improvements or knowledge developed in the performance of the Services). The Client may use the Materials as well as the Deliverables themselves, as permitted by this Agreement.

7.4 Third Party IPR

- 7.4.1 The Client acknowledges and accepts that CCL may make use of Third Party IPR in the provision of the Services.
- 7.4.2 CCL shall licence or procure the licensing of any such Third Party IPR to the Client as is necessary to receive the benefits of the Services. However, CCL may specify that the Services shall be provided subject to the applicable Third Party IPR terms (including any limitations or end-user obligations set out therein). In such event the Third Party IPR terms shall be deemed to be incorporated into and form part of the Agreement.
- 7.4.3 CCL accepts no liability for the content or accuracy of any Third Party IPR.

General

- 7.5 The Client for itself and on behalf of each Associate acknowledges that all Intellectual Property Rights in the Services including in the Database and the Materials and all related documents and information are and shall at all times remain the property of CCL or its licensors. No rights to or property in the Services shall pass to the Client. No right to modify, adapt or create derivative works from the Services or any part of them is granted to the Client or any Associate.
 - 7.6 Without limitation to the foregoing, the Client shall have no right to use or allow the use of the Services or Deliverables in order to:
 - 7.6.1 create or allow others to create competitor services or product;
 - 7.6.2 disassemble, decompile, reverse-engineer or create derivative databases or other works for internal or external purposes;
 - 7.6.3 use in respect of the provision of services by the Client to any third parties (including Associates); or
 - 7.6.4 to automatically download or index the Website by any means.
 - 7.7 If any action or proceeding is brought against the Client or any Associate in respect of any alleged infringement of any Intellectual Property Right in respect of the Services by a third party, or against CCL in respect of any alleged infringement or any Intellectual Property Right in respect of the Content or Data (in each case, an **IPR Claim**) then CCL or Client, as appropriate shall indemnify the other Party from and against all costs, damages, liabilities, and losses agreed to be paid by way of settlement or compromise by, or finally awarded against the other Party as a result of or in connection with an IPR Claim provided that:
 - 7.7.1 the indemnified Party shall notify the other Party in writing of any such allegation or claim within five Business Days after becoming aware of the same;
 - 7.7.2 the indemnified Party shall make no verbal or written admission relating to the IPR Claim without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed; and
 - 7.7.3 the indemnifying Party (or any person nominated by it) shall at its own expense be entitled to conduct and/or settle all negotiations and litigation so arising and the indemnified Party shall at the other Party's expense give to the other Party (or any person nominated by it) such reasonable assistance in connection therewith as the indemnifying Party from time to time may reasonably request.
 - 7.8 The exclusions and limitations under Condition 10 shall not apply to the indemnity under Condition 7.7.
 - 7.9 In the event of any claim or allegation in respect of breach of any Intellectual Property Rights being made in respect of the Services, CCL may:
 - 7.9.1 obtain the right for the Client to continue using the Services in the manner permitted under these Conditions; or
 - 7.9.2 modify the Service so as to avoid the alleged infringement provided that such modification shall not, in the reasonable opinion of the Client, materially detract from the overall performance of the Service.
- #### **8 Warranties and undertakings**
- 8.1 CCL undertakes to the Client:
 - 8.1.1 that it will provide the Services in a timely, professional and efficient manner in accordance with Good Industry Practice and using adequately trained and qualified personnel;
 - 8.1.2 it will follow its normal procedures and processes and act in accordance with Good Industry Practice to test for viruses contained in or introduced into the Website and act in accordance with Good Industry Practice to prevent viruses from being introduced into or remaining within the Website;

- 8.1.3 it will at all times comply with the provisions of the Data Protection Legislation;
 - 8.1.4 it has and will maintain in force at all relevant times, all licences, permit and consents necessary to provide the Services and perform its obligations as appropriate in accordance with the terms of this agreement; and
 - 8.1.5 it is and will at all relevant times remain in compliance with all applicable laws, statutes, regulations and codes of practice.
- 8.2 CCL does not warrant that the use of the Services will be uninterrupted or error-free.
- 8.3 Without prejudice to any other provision of these Conditions, if CCL receives written notice from the Client of any breach by CCL of any of the warranties contained in this Condition 8, CCL shall use commercially reasonable endeavours to remedy that breach as soon as reasonably practicable (and, in any event, within 30 days) after receiving that notice, failing which, the Client may pursue any rights or remedies available to it.
- 8.4 CCL will not be liable for any deficiency in the Service attributable to operator error, deficiencies or errors relating to any third party component not provided by CCL or third party connectivity necessary to access the Service. When notifying a defect or error the Client must (so far as it is able) provide CCL with one or more documented examples of such defect or error.
- 8.5 CCL will have no obligation under this Condition 8 to the extent a claim is based on use of the Services in a manner inconsistent with this Agreement or as a result of negligence or wilful misconduct of the Client.

Restrictions on Use

- 8.6 As a condition of access to the Services, the Client agrees:
- 8.6.1 not to use the Service to commit any act of fraud;
 - 8.6.2 not to use the Service for purposes of promoting unsolicited advertising or sending spam;
 - 8.6.3 not to use the Service to simulate communications from CCL or another service or entity in order to collect identity information, authentication credentials, or other information ('phishing');
 - 8.6.4 not to use the Service in any manner that disrupts the operation of CCL's business or the business of any other entity;
 - 8.6.5 not to use the Service in any manner that harms minors;
 - 8.6.6 not to perform or promote any unlawful activity;
 - 8.6.7 not to represent or suggest that CCL endorses any other business, product or service unless CCL has separately agreed to do so in writing; and
 - 8.6.8 not to use the Service to gain unauthorised access to or use of computers, data, systems, accounts or networks.

9 Equipment

- 9.1 The Client must provide, at its own cost, all telecommunication services, computers and other equipment or services necessary to enable it to have access to the Services. The Client must comply with all rules and regulations that apply to the communication means by which the Client obtains access to the Services.

10 Rights and liabilities

- 10.1 CCL may subcontract the performance of any or all of its duties and obligations under these Conditions as it shall in its absolute discretion consider necessary or expedient, provided that CCL remains liable for the acts and omissions of those subcontractors as if they were its own.
- 10.2 The aggregate liability of CCL to the Client in respect of all claims, losses or damages, whether arising from contract, tort (including negligence) or otherwise under or in connection with these Conditions arising in any Operating Year (where, for a series of connected claims, the Operating Year in question shall be the Operating Year of the first event giving rise to a claim), shall in no event exceed the aggregate of all Fees paid or payable by the Client in such Operating Year.
- 10.3 Subject to Conditions 10.4, neither Party will be liable to the other Party for:
- 10.3.1 any indirect, special or consequential loss or damage; or
 - 10.3.2 any loss of profits, turnover, data, business opportunities, anticipated savings or marketing outcomes or damage to goodwill (whether direct or indirect).
- 10.4 Neither Party limits its liability for:
- 10.4.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - 10.4.2 fraud or fraudulent misrepresentation by it or its employees; or
 - 10.4.3 any other liability which cannot lawfully be excluded or limited.

11 Termination

- 11.1 Without prejudice to its other rights and remedies either Party may, by written notice to the other (the **Breaching Party**), terminate these Conditions, with immediate effect, upon or at any time following the occurrence of one or more of the following events:
- 11.1.1 the Breaching Party is in material or persistent breach of any of its obligations under these Conditions and either that breach is incapable of remedy, or the Breaching Party has failed to remedy that breach within 20 Business Days after receiving written notice requiring it to remedy that breach; or
- 11.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction.
- 11.2 Notwithstanding the termination of the Agreement, the Client shall remain liable to pay to CCL all sums accrued due on or prior to the date of termination.

12 Confidentiality

- 12.1 Each Party shall keep confidential all information of the other party relating to the Services, the contents of these Conditions, the business of the other Party or any other information of the other Party which ought reasonably to be considered confidential or proprietary. For the purposes of this condition, any Data provided by the Client to CCL shall be deemed to be confidential information of the Client and shall not be disclosed save as contemplated by these Conditions and the provisions of the Services. The provisions of this Condition shall not apply to:
- 12.1.1 any information which was in the public domain at the Commencement Date;
- 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of these Conditions;
- 12.1.3 any disclosure required by law or a Competent Authority or otherwise by the provisions of these Conditions; or
- 12.1.4 any Data which a Client designates as public information.
- 12.2 The foregoing confidentiality obligations shall remain in full force and effect notwithstanding the expiry or earlier termination of the Agreement.

13 Force Majeure

- 13.1 A Party will not be liable if delayed in or prevented from performing its obligations under these Conditions due to a Force Majeure Event, provided that it:
- 13.1.1 promptly notifies the other of the Force Majeure Event and its expected duration, and
- 13.1.2 uses reasonable endeavours to minimise the effects of that event.
- 13.2 If, due to a Force Majeure Event, a Party:
- 13.2.1 is unable to perform a material obligation, or
- 13.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than 30 Business Days,
- the other Party may, within 30 Business Days terminate these Conditions on notice.

14 General

14.1 Compliance with law

Each Party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under these Conditions, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither Party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other Party or its employees, agents and representatives.

14.2 Assignment and subcontracting

CCL may novate, assign or subcontract any or all of its obligations under this Agreement at its discretion. The Client may not transfer or assign or otherwise create an interest in its rights under this Agreement without the prior written consent of CCL.

14.3 Relationship

The Parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

- 14.4 Survival**
Provisions which by their terms or intent are to survive termination hereof will do so.
- 14.5 Variation**
CCL may vary Conditions by 1 month's prior notice to the Client, either directly or by means of a notice within the Service by any log-in banner or similar prominent means.
- 14.6 Severability**
The unenforceability of any part of these Conditions will not affect the enforceability of any other part.
- 14.7 Waiver**
Failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of these Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Conditions.
- 14.8 Notices**
- 14.8.1 Notices under these Conditions will be in writing and sent to the person and address in Condition 14.8.2. They may be given, and will be deemed received:
- (a) by first-class post: two Business Days after posting;
 - (b) by hand: on delivery;
 - (c) by facsimile: on receipt of a successful transmission report from the correct number; and
 - (d) by e-mail: 24 hours from delivery if no notice of delivery failure is received.
- 14.8.2 Notices, will be sent:
- (a) to CCL to: Alex Packham, 104 Cavell Street, London E1 2JA, email: alex@CCL.co, and
 - (b) to the Client contact specified on the Order Form.
- 14.9 Equitable relief**
Each Party recognises that its breach or threatened breach of these Conditions may cause the other irreparable harm, and that the other may therefore be entitled to injunctive or other equitable relief.
- 14.10 Mitigation**
In respect of any indemnity given by either Party under these Conditions, the Party that receives the benefit of the indemnity shall take all reasonable steps so as to reduce or mitigate the loss covered by the indemnity.
- 14.11 Rights of third parties**
For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Conditions are not intended to and do not give any person who is not a party to them any right to enforce any of the provisions. However, this does not affect any right or remedy of such a person that exists or is available apart from that Act.
- 15 Dispute resolution**
- 15.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with these Conditions within twenty (20) Business Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 15.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 15.3 If the dispute cannot be resolved by the Parties pursuant to Condition 15.2, the Parties shall refer it to mediation pursuant to the procedure set out in Condition 15.5 unless either Party does not agree to mediation.
- 15.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 15.4.1 A neutral adviser or mediator (the **Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (ten) Business Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (ten) Business Days from the date of the proposal to appoint a Mediator or within ten (ten) Business Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (International Dispute Resolution Centre 70 Fleet Street, London, EC4Y 1EU) ("CEDR") to appoint a Mediator.

- 15.4.2 The Parties shall within ten (ten) Business Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 15.4.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 15.4.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 15.4.5 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Business Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.
- 15.5 Subject to Condition 15.2, the Parties shall not institute court proceedings until the procedures set out in Conditions 15.1 to 15.4 have been completed.
- 16 Governing Law and Jurisdiction**
- 16.1 These Conditions and any Agreement are governed by the law of England and Wales.
- 16.2 The Parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 17 Entire agreement**
- 17.1 Any Agreement shall incorporate these Conditions to the exclusion of all others. These Conditions and the Order Form, together with the documents referred to in them, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 17.2 Each of the Parties acknowledges and agrees that in entering into the Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in these Conditions and any document referred to in them. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of these Conditions.
- 17.3 Nothing in these Conditions shall operate to exclude any liability for fraud.

