Visualsoft Limited - Terms of business

Version 4

Visualsoft

Introduction

Where Visualsoft and the Client agree that Visualsoft will provide Services to the Client, the parties will enter into a Project Agreement setting out which Services Visualsoft will provide.

These Terms of Business apply to all Services provided by Visualsoft. If Visualsoft and the Client fail to enter into a Project Agreement, these Terms of Business will apply to any Services that Visualsoft provides, as described in clause 3.3 of Section 1 (General Terms and Conditions), unless Visualsoft and the Client agree otherwise in writing.

Visualsoft and the Client may subsequently agree that Visualsoft will provide additional Services to the Client by entering into a separate Project Agreement, which will create a separate and binding Contract between the parties.
The Sections of these Terms of Business that apply to the parties will depend on the Services provided by Visualsoft, as set out below:

- Section 1 (General Terms and Conditions) and Section 5 (Definitions and Interpretation) apply to all Services;
- Section 2 (Platform) only applies to the provision of the Platform;
- Section 3 (Online Marketing Services) only applies to the provision of the Online Marketing Services; and
- Section 4 (Affiliate Network) only applies to the provision of the Affiliate Network services.

Section 1 - General terms and conditions

1. **Definitions and interpretation**

   Unless otherwise provided, capitalised expressions used in these Terms of Business shall have the meanings set out in Section 5 (Definitions and Interpretation) and these Terms of Business shall be interpreted in accordance with the rules set out in Section 5 (Definitions and Interpretation).

2. **Application of these terms of business**

   2.1. Where Visualsoft provides the Client with:

   2.1.1. the Platform, then this Section 1 (General Terms and Conditions) and Section 2 (Platform) of these Terms of Business shall apply;

   2.1.2. Online Marketing Services, then this Section 1 (General Terms and Conditions) and Section 3 (Online Marketing Services) of these Terms of Business shall apply; and/or

   2.1.3. access to the Affiliate Network, then this Section 1 (General Terms and Conditions) and Section 4 (Affiliate Network) of these Terms of Business shall apply.

   2.2. In the event of any conflict, inconsistency or ambiguity between:

   2.2.1. these Terms of Business, the Project Agreement and the Proposal, the following order of precedence shall apply:

   2.2.1.1. the Terms of Business;

   2.2.1.2. the Project Agreement; and

   2.2.1.3. the Proposal;

   2.2.2. the Sections of these Terms of Business, the following order of precedence shall apply:

   2.2.2.1. Section 2 (Platform), Section 3 (Online Marketing Services) and Section 4 (Affiliate Network) of these Terms of Business, each as applicable; and

   2.2.2.2. Section 1 (General Terms and Conditions) and Section 5 (Definitions and Interpretation).

3. Basis of contract

3.1. The Proposal constitutes an invitation (not an offer) from Visualsoft for the Client to purchase the Services in accordance with these Terms of Business.

3.2. Unless otherwise agreed in writing with Visualsoft, the Contract shall be deemed to commence on the earlier of:

3.2.1. the date on which the Project Agreement is signed by the Client and Visualsoft; or

3.2.2. the date on which Visualsoft commences the performance of the Services (as specified in the unsigned Project Agreement) on the Client's instruction, ("**Commencement Date**").

3.3. If no Project Agreement is signed by the parties, the Contract shall comprise the latest version of the unsigned Project Agreement provided by Visualsoft to the Client on, or before, the Commencement Date and these Terms of Business.

3.4. These Terms of Business apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3.5. Any samples, drawings, descriptive matter or advertising issued by Visualsoft and any descriptions or illustrations of the Services contained in Visualsoft's catalogues, brochures or demonstrations are issued or published for the sole purpose of giving an approximate idea of the Services. They shall not form part of the Contract or have any contractual force.

3.6. If the Client receives any services from Visualsoft other than the Services described in the Project Agreement (and a separate Project Agreement has not been entered into with respect to such additional Services), such Services shall, unless the parties agree to other terms in writing, be deemed to be supplied under a separate contract governed by the then current version of these Terms of Business, which are available at www.visualsoft.co.uk/terms, at the time of delivery of the relevant Services.

4. Term

4.1. The Contract shall commence on the Commencement Date.

4.2. Unless otherwise stated in the Project Agreement:

4.2.1. the initial term of the Contract shall be 24 months ("**Initial Term**"); and

4.2.2. the Contract shall automatically extend for a period equivalent to the Initial Term ("**Extended Term**") at the end of the Initial Term or each Extended Term, unless terminated in accordance with clause 4.3 or clause 15 of this Section 1 (General Terms and Conditions).

4.3. A party may give written notice to the other party, not later than 90 days prior to the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

4.4. Any Extended Term shall be subject to the then current version of the Terms of Business which are available for the Client to access at www.visualsoft.co.uk/terms.

5. **Supply of services**

5.1. Visualsoft shall provide the Services to the Client in accordance with:

5.1.1. the Applicable Law; and

5.1.2. the Proposal and the Project Agreement, in all material respects.

5.2. In providing the Services, Visualsoft shall use reasonable endeavours to meet any performance dates specified in the Proposal and/or the Project Agreement, but any such dates shall be estimates only and time shall not be of the essence.

5.3. Visualsoft warrants to the Client that the Services shall be provided using reasonable care and skill.

5.4. Notwithstanding anything to the contrary, the parties acknowledge and agree that Visualsoft cannot guarantee the results or effectiveness of the Services, including (as applicable, given the nature of the Services being provided by Visualsoft):

5.4.1. search engine rankings;

5.4.2. visitor numbers;

5.4.3. the amount of revenue generated by the Client; or

5.4.4. any other metric or KPI that the Client may use from time to time to determine the results or effectiveness of the Services.

5.5. The Services may contain integration with, or links or connections to, third party websites, software or services, which are not owned or controlled by Visualsoft (**"Third Party Services"**). Unless otherwise agreed in writing with Visualsoft:

5.5.1. use of any Third Party Services by the Client (or by Visualsoft on behalf of the Client) is governed solely by the terms and conditions of the relevant Third Party Service, at the sole risk and responsibility of the Client;

5.5.2. Visualsoft is not responsible for ensuring the successful integration of, nor liable for any damage or loss arising from, or in connection with, any Third Party Services; and

5.5.3. Visualsoft shall have no liability for any damage or loss arising from, or in connection with, any Third Party Services.

5.6. The parties acknowledge and agree that, unless otherwise agreed in writing with Visualsoft, Visualsoft is not responsible for:

5.6.1. any third parties (including Third Party Services) engaged or paid for by the Client;

5.6.2. any factor or circumstance (including algorithmic changes) attributable to a third party or Third Party Service;

5.6.3. any external development requirements (technical or otherwise);

5.6.4. any content (including in relation to products and pricing) on the Website;

5.6.5. applying for, renewing or paying fees in relation to any domain names on or relating to the Website;

5.6.6. obtaining any licences for materials, including on the Website or for any Client Materials;

5.6.7. advising on any aspect of the Client's compliance with any and all applicable laws, including the Data Protection Legislation (including reviewing customer databases);

5.6.8. making design or other alterations to the Website;

5.6.9. setting up or maintaining:

5.6.9.1. email accounts or email addresses for the Client;

5.6.9.2. URL forwarding or redirect services on the Website;

5.6.9.3. hyperlinks on the Website;

5.6.9.4. discount or other promotional codes on the Website; or

5.6.9.5. social network pages or Websites not specified in the Project Agreement.

5.7. Visualsoft provides the Services to the Client on a non-exclusive basis. Visualsoft reserves the right to provide services the same as, or similar to, the Services to the Client's competitors.

5.8. Visualsoft shall not be responsible for creating back-ups of the Client Data or Customer Materials.

5.9. The Client shall be deemed to have accepted the Services once Visualsoft confirms that they have been completed in accordance with the Contract, or when the Client uses any part of the Services for any revenue-earning purposes or to provide any services to third parties other than for test purposes.

5.10.   Visualsoft shall have no obligation to perform any action that Visualsoft determines to be unethical or contrary to good practice.

6.   The client's obligations

6.1.   The Client shall be solely responsible for any and all activities resulting from the Services, including:

6.1.1.   any and all goods and/or services sold, or offered for sale, to customers or potential customers from time to time by the Client, including any and all associated charges, descriptions, questions, promotional offers, defects and/or any other such information; and

6.1.2.   any and all contracts of sale made with customers from time to time by the Client, including all associated terms and conditions, policies, charges, refunds, returns, warranties, support questions, comments, complaints and/or any other such information.

6.2.   The Client is solely responsible for determining, collecting, withholding, reporting and/or remitting any and all taxes, duties, fees and/or other additional charges arising out of, or in connection with, any and all goods and/or services sold as a result of receiving the Services. To the extent that such taxes are calculated by Visualsoft using the international or local tax rates tool, the Client acknowledges that it is solely responsible for selecting the applicable tax rates and that Visualsoft bears no responsibility in the event that such tax rates turn out to be incorrect or are unavailable.

6.3.   The Client shall:

6.3.1.   comply with any and all applicable laws and/or regulations relevant to its receipt and/or use of the Services (including in relation to customers and/or potential customers);

6.3.2.   co-operate with Visualsoft in any manner reasonably required by Visualsoft in order to provide the Services, including in relation to the provision of any and all information and/or materials necessary for Visualsoft to provide the Services, within the timeframe specified by Visualsoft;

6.3.3.   obtain and maintain all licences, permissions and/or consents required for the Services;

6.3.4.   comply with the Acceptable Use Policy;

6.3.5.   comply with the Fair Use Policy;

6.3.6.   comply with any and all additional obligations, as specified in the Project Agreement or otherwise agreed in writing; and

6.3.7. be responsible for any breach of the Contract by any of the Client's contractors, sub-contractors, agents or representatives as if it were the Client's own breach.

6.4. The Client warrants that any and all information provided to Visualsoft is and will be accurate and complete in all material respects.

6.5. The Client shall not:

6.5.1. use the Services in a way that engages in unlawful or illegal activities;

6.5.2. unlawfully or illegally process Personal Data;

6.5.3. infringe the Intellectual Property Rights of Visualsoft or any third party;

6.5.4. reproduce, duplicate, copy, sell, re-sell or otherwise exploit any aspect of the Services;

6.5.5. decompile, disassemble or otherwise reverse engineer any aspect of the Services in order to work around, bypass or otherwise circumvent any technical limitations of the Services;

6.5.6. introduce any Virus or Vulnerability into the systems, servers or networks of Visualsoft or any other third party's systems, servers or networks; and/or

6.5.7. in Visualsoft's sole discretion, overburden or interfere with Visualsoft's systems, servers or networks.

6.6. If Visualsoft's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client, or failure by the Client to perform any relevant obligation under the Contract ("**Client Default**"):

6.6.1. without limiting or affecting any other right or remedy available to it, Visualsoft shall have the right to suspend performance of the Services until the Client remedies the Client Default and to rely on the Client Default to relieve it from the performance of any of its obligations, in each case to the extent the Client Default prevents or delays Visualsoft's performance of any of its obligations;

6.6.2. Visualsoft shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Visualsoft's failure or delay to perform any of its obligations; and

6.6.3. the Client shall, on Visualsoft's written demand, reimburse Visualsoft for any costs or losses sustained or incurred by Visualsoft arising directly or indirectly from the Client Default.

6.6.4. Notwithstanding anything to the contrary, any unauthorised modification or improper use of the Services by, or on behalf of, the Client shall render all of Visualsoft's obligations and warranties under the Contract null and void.

7. Fees and payment

7.1. The Client shall pay the Fees in the amounts and at the times specified in the Project Agreement.

7.2. Unless otherwise specified in the Project Agreement:

7.2.1. the Client shall make payment of each invoice within 30 days of the date of the relevant invoice; and

7.2.2. all invoices are raised and payable in pounds sterling.

7.3. If the Client believes that it has been incorrectly invoiced by Visualsoft, it shall contact Visualsoft within 3 months of receipt of the relevant invoice, failing which the Client shall be deemed to have waived any dispute relating to the invoice, and the amounts referenced therein shall be considered correct, complete and conclusive between the parties.

7.4. Visualsoft reserves the right to increase the Fees:

7.4.1. 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 may take effect at any time following 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;

7.4.2. for any factor beyond the control of Visualsoft, including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs;

7.4.3. if Visualsoft changes the scope of the Services at the request of the Client;

7.4.4. if any act or omission of the Client makes performance of the Services more difficult or time consuming for Visualsoft; and/or

7.4.5. if the Client does not use a preferred partner or solution of Visualsoft (including any custom branded payment solution that Visualsoft offers from time to time).

7.5. Time for payment shall be of the essence of the Contract.

7.6. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by Visualsoft to the Client, the

Client shall, on receipt of a valid VAT invoice from Visualsoft, pay to Visualsoft such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.7. If the Client fails to make a payment due to Visualsoft under the Contract by the due date, without affecting any other right or remedy available to Visualsoft, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause 7.7 shall accrue each day at 6% a year above the Bank of England's base rate from time to time.

7.8. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.9. Reasonable out-of-pocket expenses may be charged by Visualsoft on production of evidence of expenditure to the Client.

8. **Intellectual property rights**

8.1. The Client acknowledges and agrees that all Intellectual Property Rights in the Services (other than the Third Party Services, Client Materials or Client Data) shall be owned by Visualsoft and its licensors ("**Visualsoft's Intellectual Property Rights**"), and the Client shall have no rights in or to the Services other than the right to receive them in accordance with the Contract.

8.2. In consideration of the Fees paid by the Client to Visualsoft, Visualsoft grants to the Client a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to use Visualsoft's Intellectual Property Rights for the purposes of receiving and using the Services in the course of the Client's normal business operations.

8.3. The Client shall not sub-license, assign or otherwise transfer Visualsoft's Intellectual Property Rights.

8.4. The Client warrants that the Client and its licensors own all Intellectual Property Rights in the Client Materials and the Client Data, and that the Client has all the rights in relation to the Client Materials and the Client Data that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

8.5. The Client grants Visualsoft a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and/or modify the Client Materials and the Client Data for the purpose of providing the Services to the Client.

8.6. In the event that Visualsoft amends, varies or otherwise changes the Services as a result of feedback given by the Client, the Client hereby immediately and absolutely assigns to Visualsoft all right, title, interest in any such amendment, variation or change, present and future. The Client shall, at its own expense, promptly execute

and deliver such documents, and perform such acts, as may be required for the purpose of giving full effect to this clause 8.6.

8.7. All Intellectual Property Rights developed or created in the Client Materials or the Client Data by Visualsoft (whether as a result of the development, modification or otherwise of such Client Materials or Client Data) shall be owned by Visualsoft and shall be licensed to the Client in accordance with clause 8.2 of this Section 1 (General Terms and Conditions).

8.8. If Visualsoft's provision of the Services becomes or, in the opinion of qualified legal counsel appointed by Visualsoft, is likely to become the subject of a claim for infringement of a third party's Intellectual Property Rights, Visualsoft may:

8.8.1. replace all or part of the Services with functionally equivalent services at no additional cost to the Client;

8.8.2. modify the Services as necessary to avoid such claim, provided that the modified Services function in substantially the same way as they did previously; or

8.8.3. procure for the Client a licence from the relevant third party to continue receiving the Services.

8.9. If Visualsoft is unable to procure the Client the right to continue receiving the Services on terms that are commercially reasonable to Visualsoft, in accordance with clause 8.5 of this Section 1 (General Terms and Conditions), the licence granted in clause 8.2 of this Section 1 (General Terms and Conditions) and the Contract shall be terminated immediately, and the Client shall be refunded any Fees for Services paid for but not yet provided. Any such refund shall be the sole and exclusive remedy available to the Client relating to this clause 8.9.

8.10. Visualsoft shall defend the Client, its officers, directors and employees against any claim that the Client's receipt of the Services in accordance with the Contract infringes any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Client for any amounts awarded against the Client in judgement or settlement of such claims, provided that:

8.10.1. Visualsoft is given prompt notice of any such claim;

8.10.2. the Client does not make any admission, or otherwise attempt to compromise or settle the claim, and provides reasonable co-operation to Visualsoft in the defence or settlement of such claim; and

8.10.3. Visualsoft is given sole authority to defend or settle the claim.

8.11. In the defence or settlement of any such claim, Visualsoft may procure the right for the Client to continue to receive the Services, replace or modify the Services, so

that they become non-infringing, or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.

8.12.   In no event shall Visualsoft, its employees, agents, representatives and sub-contractors be liable to the Client to the extent that the alleged infringement arises out of, or in connection with:

8.12.1.   a modification of the Services by anyone other than Visualsoft;

8.12.2.   the Client Materials;

8.12.3.   the Client Data;

8.12.4.   the Client's use of the Services in a manner contrary to the instructions given to the Client by Visualsoft; or

8.12.5.   the Client's use of the Services after notice of the alleged or actual infringement from Visualsoft, a third party or any appropriate authority.

8.13.   This clause 8 states the Client's sole and exclusive rights and remedies, and Visualsoft's (including Visualsoft's employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

9.   Data protection

9.1.   Both parties shall comply with all applicable requirements of the Data Protection Legislation. For the avoidance of doubt, this clause 9 is in addition to, and does not relieve, remove or replace, each party's obligations or rights under the Data Protection Legislation.

9.2.   The parties acknowledge that, for the purposes of the Data Protection Legislation, the Client is the Controller and Visualsoft is the Processor.

9.3.   The scope, nature, purpose and duration of the processing undertaken by Visualsoft when providing the Services, as well as the types of Personal Data and the categories of Data Subject, shall be set out in the Data Processing Schedule.

9.4.   During and after the Term, Visualsoft may use the Client Data, provided that it is anonymised to improve or market the Services. The Client hereby grants Visualsoft an irrevocable, fully paid-up, perpetual, worldwide, non-exclusive, royalty-free licence to use the Client Data solely for the purposes described in this clause 9.4.

9.5.   Without prejudice to the generality of this clause 9:

9.5.1. the Client shall ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of any Personal Data to Visualsoft for the duration and purposes of the Contract; and

9.5.2. in relation to any Personal Data that Visualsoft processes on behalf of the Client, Visualsoft shall:

9.5.2.1. process that Personal Data only on the documented written instructions of the Client, which are set out in the Data Processing Schedule, unless Visualsoft is required by the Applicable Law to otherwise process that Personal Data. Where Visualsoft is relying on the Applicable Law as the basis for processing Personal Data, Visualsoft shall promptly notify the Client before performing the processing, unless the Applicable Law prohibits Visualsoft from so notifying the Client on important grounds of public interest;

9.5.2.2. immediately inform the Client if, in the opinion of Visualsoft, an instruction infringes the Data Protection Legislation, provided this is not a requirement for Visualsoft to provide the Client with legal advice;

9.5.2.3. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

9.5.2.4. ensure that all personnel who have access to and/or process Personal Data are obliged to keep it confidential;

9.5.2.5. not transfer any Personal Data outside of the United Kingdom, unless the following conditions are fulfilled:

(a) Visualsoft has provided appropriate safeguards in relation to the transfer;

(b) the Data Subject has enforceable rights and effective legal remedies;

(c) Visualsoft complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(d) Visualsoft complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

9.5.2.6. assist the Client, at the Client's cost, in responding to any request from a Data Subject and/or in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

9.5.2.7. notify the Client without undue delay on becoming aware of a Personal Data Breach;

9.5.2.8. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by the Applicable Law to store the Personal Data; and

9.5.2.9. at least once a year, conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under the Contract, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices. On the Client's written request, Visualsoft will make all of the relevant audit reports available to the Client for review. The Client will treat such audit reports as Visualsoft's confidential information.

9.5.3. The Client consents to Visualsoft appointing those third-party processors set out in the Data Processing Schedule as third-party processors of Personal Data under the Contract. Visualsoft confirms that it has or (as this case may be) will enter into a written agreement with the relevant third-party processor to reflect the requirements of the Data Protection Legislation. As between the Client and Visualsoft, Visualsoft shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9. Visualsoft may only authorise a new third-party processor to process Personal Data if the Client is provided with an opportunity to object to the appointment of each third-party processor within 5 Business Days after Visualsoft supplies the Client with full details in writing regarding such third-party processor and provided Visualsoft enters into a written agreement with the relevant third-party processor to reflect the requirements of the Data Protection Legislation. If the Client acting reasonably objects to the appointment of a new third-party processor, Visualsoft may terminate the Contract with no liability to the Client.

9.6. In providing the Service the Visualsoft software application will interface with third party providers in order to synchronise data between those systems. Visualsoft will only synchronise such data as is strictly necessary for the operation of the Services. Where Visualsoft is required to support the operation of these interfaces and such support requires access to information stored in the third party provider's system, Visualsoft will never ask for Client login credentials or passwords. On the Client's instruction Visualsoft may request, in writing, that the Client provide secondary user permission, or a delegated authority account, which provides limited access to only the required information and system features such as is necessary for resolving any technical issues.

9.7. No cardholder data is handled, stored or processed by Visualsoft, however, for the purposes of PCI-DSS, Visualsoft is responsible for the security of our cardholder data environment on behalf of our clients and their customers.

9.7.1. Clients are responsible for the security of their own cardholder data environment(s) (including but not limited to card payment devices, other online stores, physical stores, telephone orders) that may exist in addition to their use of the Visualsoft platform.

10. Cookies and other tracking technologies

During the Term, the Client may implement, or instruct Visualsoft to implement on its behalf, cookies, pixels, web beacons and other similar tracking technologies provided by Third Party Services, which store or gain access to information stored in the terminal equipment of an end-user ("**Tracking Technologies**") on the Website. In doing so, the Client acknowledges that it is solely responsible for ensuring that the Website is compliant with any and all applicable laws and/or regulations governing such Tracking Technologies, including the Data Protection Legislation. Without prejudice to its obligations under applicable laws and/or regulations including the Data Protection Legislation in connection with the use of Tracking Technologies, the Client is solely responsible for making any updates necessary to the Website's fair processing notice and/or cookie policy and, if relevant, ensuring that any non-essential Tracking Technologies are only implemented once end-user consent (which is compliant with the Data Protection Legislation) has been obtained.

11. Confidentiality

11.1. Each party undertakes that it shall:

11.1.1. treat the other party's Confidential Information as confidential; and

11.1.2. not disclose the other party's Confidential Information to any other person, except as permitted by clause 11.2 of this Section 1 (General Terms and Conditions).

11.2. Each party may disclose the other party's Confidential Information:

11.2.1. to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract, provided that such employees, officers, representatives, contractors, sub-contractors or advisers agree to comply with this clause 11; or

11.2.2. as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.

11.3. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights or perform its obligations under or in connection with the Contract.

12. Limitation of liability

12.1. The restrictions on liability in this clause 12 apply to every liability arising under or in connection with the Contract, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

12.2.1. death or personal injury caused by negligence; or

12.2.2. fraud or fraudulent misrepresentation.

12.3. Subject to clause 12.2 of this Section 1 (General Terms and Conditions), Visualsoft's total liability to the Client shall not exceed the amount of Fees that the Client has actually paid to Visualsoft in the Contract Year in which the claim arose.

12.4. Subject to clause 12.2 of this Section 1 (General Terms and Conditions), Visualsoft shall have no liability for the following types of loss:

12.4.1. loss of profits;

12.4.2. loss of sales or business;

12.4.3. loss of agreements or contracts;

12.4.4. loss of anticipated savings;

12.4.5. loss of use or corruption of software, data or information;

12.4.6. loss of or damage to goodwill; and

12.4.7. indirect or consequential loss.

12.5. This clause 12 shall survive termination of the Contract.

13. Indemnity

The Client shall indemnify Visualsoft 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 reasonable professional costs and expenses) suffered or incurred by Visualsoft arising out of, or in connection with:

13.1.   any breach of clause 6, clause 7, clause 8, clause 9, clause 10, clause 11 and/or, clause 20 of this Section 1 (General Terms and Conditions);

13.2.   if Section 2 (Platform) is applicable, any breach of clause 1 and/or clause 2.4 of Section 2 (Platform);

13.3.   if Section 4 (Affiliate Network) is applicable, any breach of clause 1, clause 2, clause 3 and/or clause 6 of Section 4 (Affiliate Network); and/or

13.4.   any enforcement of the Contract.

14. Suspension

14.1.   Visualsoft may, without prejudice to any other rights or remedies available to it, suspend its performance of the Services and/or suspend the Client's access to, or use of, the Services in whole or in part immediately on notice to the Client if:

14.1.1.   the Client has failed to pay any amounts due to Visualsoft in accordance with clause 7 of this Section 1 (General Terms and Conditions);

14.1.2.   the Client is otherwise in breach of its obligations under the Contract;

14.1.3.   Visualsoft has the right to suspend its performance of the Services and/or suspend the Client's access to, or use of, the Services under any other contract or agreement between Visualsoft and the Client;

14.1.4.   there is an attack on the Services, or if Client Data is accessed or manipulated by a third party without the Client's consent;

14.1.5.   Visualsoft is required by the Applicable Law to suspend the Client's access to, or use of, the Services; or

14.1.6.   Visualsoft reasonably believes that the suspension of the Services is necessary to protect its infrastructure, network or the use of the Services by other customers because of a threat to the security, integrity or use of the Services.

14.2.   Visualsoft shall use reasonable endeavours to re-establish or permit access to the Services as soon as possible following Visualsoft's determination that the cause of the suspension has been resolved.

14.3. If any cause of suspension is not resolved within 30 days of Visualsoft suspending the Services (or such other period as Visualsoft may agree in writing with the Client), Visualsoft may terminate the Contract immediately upon written notice to the Client.

14.4. Visualsoft shall have no liability, whether under the Contract or at law, to the Client for any exercise of its rights pursuant to this clause 14.

15. Termination

15.1. Without affecting any other right or remedy available to it, Visualsoft may terminate the Contract immediately:

    15.1.1. in accordance with clause 7.5;

    15.1.2. in accordance with clause 9.5.3; or

    15.1.3. if, in Visualsoft's sole discretion, the Client:

        15.1.3.1. breaches the Acceptable Use Policy;

        15.1.3.2. breaches the Fair Use Policy; or

        15.1.3.3. abuses, verbally or in writing, any employee, officer, representative, contractor, sub-contractor or adviser of Visualsoft.

15.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving the other party written notice if:

    15.2.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so;

    15.2.2. 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), obtaining a moratorium, 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;

    15.2.3. 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;

    15.2.4. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy; or

    15.2.5. in accordance with clause 17.2.

16. Consequences of termination

16.1. Except where the Contract is terminated by the Client pursuant to clause 15.2.1, clause 15.2.2 or clause 15.2.3 of this Section 1 (General Terms and Conditions), on termination of the Contract, all Fees relating to:

    16.1.1. the unexpired period of the Initial Term or then current Extended Term (as applicable); and

    16.1.2. any other Services not yet performed,

    shall immediately become due and payable.

16.2. On termination of the Contract for whatever reason:

    16.2.1. all licences granted under the Contract shall immediately terminate and the Client shall immediately cease all use of the Services (and Visualsoft may prevent any further use);

    16.2.2. the Client shall immediately pay all of Visualsoft's outstanding unpaid invoices and interest, and, in respect of Services supplied but for which no invoice has been submitted, Visualsoft shall submit an invoice, which shall be payable by the Client immediately on receipt; and

    16.2.3. subject to clause 9.5.2.7 of this Section 1 (General Terms and Conditions), Visualsoft may destroy or otherwise dispose of any of the Client Data or Client Materials in its possession.

16.3. The Client may request that Visualsoft provides a copy of any Client Data or Client Materials that Visualsoft has in its possession. Provided that the Client has, at that time, paid all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination), Visualsoft shall use reasonable endeavours to provide the Client with a copy of any Client Data or Client Materials in Visualsoft's possession. The Client shall pay all reasonable costs and expenses incurred by Visualsoft in returning any Client Data or Client Materials.

16.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and 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 Contract which existed at or before the date of termination or expiry.

16.5. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. Force majeure

17.1. Neither party shall be in breach of the Contract, nor liable for delay in performing or failure to perform any of its obligations under the Contract, if such delay or failure

result from events, circumstances or causes beyond its reasonable control ("**Force Majeure** Event"), including:

17.1.1. acts of God, flood, drought, earthquake or other natural disaster;

17.1.2. epidemic or pandemic;

17.1.3. terrorism, threat of terrorism, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, security incident, imposition of sanctions, embargo or breaking off of diplomatic relations;

17.1.4. nuclear, chemical or biological contamination or sonic boom;

17.1.5. any law or any action taken by a government or public authority, including an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; and/or

17.1.6. non-performance by suppliers or sub-contractors.

17.2. Where a Force Majeure Event occurs, the time for performance shall be extended by a period equivalent to the period during which performance of the obligations has been delayed or failed to be performed. If the period of delay or non-performance continues for 6 months, the party not affected may terminate the Contract by giving immediate written notice to the affected party.

18. Publicity

18.1. During and after the Term, Visualsoft shall be entitled to publicise, announce or otherwise communicate:

18.1.1. the existence of the Contract; and/or

18.1.2. that it is providing, or has provided, the Services for the Client.

18.2. The Client hereby grants Visualsoft a fully paid-up, perpetual, worldwide, non-exclusive, royalty-free licence to use the Client's name and/or logo (including any trade mark) for the purposes described in clause 18.1 of this Section 1 (General Terms and Conditions).

19. Change in law

If, at any time after the Commencement Date, there is a change in the Applicable Law and/or Regulatory Standards that results, or may result, in Visualsoft suffering any adverse impact in relation to the Services, Visualsoft shall inform the Client of any change to the Contract (including to the Fees and the Services) (such changes being limited to those which are required to be made by Visualsoft in order to mitigate the adverse impact in its entirety) and shall provide a timeframe for implementation of such changes. The Client shall not be entitled to reject the implementation of any changes that are required due to changes in the Applicable Law and/or Regulatory Standards.

20. Export control

20.1. Neither party shall export, directly or indirectly, any aspect of the Services in breach of any applicable export control laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

20.2. Each party undertakes:

20.2.1. to contractually obliged any third party to whom it discloses or transfers any aspect of the Services to, to make an undertaking to it in similar terms to the one set out above; and

20.2.2. if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

21. General

Assignment and other dealings

21.1. Visualsoft may assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract at any time.

21.2. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Visualsoft.

Audit

21.3. If Visualsoft gives at least 10 Business Days' notice, Visualsoft (or its professional advisers) may between 09:00 and 17:00 on a Business Day:

21.3.1. enter and inspect the Client's premises, and IT and communication systems; and

21.3.2. inspect, audit and take copies of relevant records, and other documents as necessary to verify the Client's compliance with the Contract.

Notices

21.4. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

21.4.1. delivered by hand, or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

21.4.2. sent by email to the address specified in the Project Agreement.

21.5. Any notice shall be deemed to have been received:

21.5.1. if delivered by hand, at the time the notice is left at the proper address;

21.5.2. 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

21.5.3. 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 21.5.3, business hours means 9.00am to 5.00pm on a Business Day.

21.6. This clause does not apply to the service of any proceedings or other documents in any legal action.

Counterparts

21.7. The Contract may be executed in separate counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart of the Contract by fax, email (in PDF, JPEG or other agreed format) or other electronic means shall take effect as transmission of an executed "wet-ink" counterpart of the Contract.

Electronic signature

21.8. Each party agrees that an electronic signature to the Contract, whether affixed digitally or transmitted by fax, email or other electronic means (including via DocuSign), is intended to authenticate such party's writing, and have the same binding and legal effect as an original signature.

Severance

21.9. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 21.9, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

Waiver

21.10. Except as permitted by clause 7.3, a waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or

remedy provided under this Contract 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 this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

No partnership or agency

21.11.   Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

Entire agreement

21.12.   The Contract 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.

21.13.   Each party acknowledges that in entering into the Contract 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 Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

Third party rights

21.14.   Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

Variation

21.15.   Except as permitted by clause 7.4 or clause 19 of this Section 1 (General Terms and Conditions), no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

Governing law

21.16.   The Contract 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.

Jurisdiction

21.17.   Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or

claims) arising out of or in connection with the Contract or its subject matter or formation.

Section 2 - Platform

1. **Application of these terms of business**

    1.1. To access and use the Platform, the Client shall provide Visualsoft with:

    1.1.1. its registered company name;

    1.1.2. its registered company number;

    1.1.3. its registered office address;

    1.1.4. its principal place of business (if different to its registered office address);

    1.1.5. its VAT number (if applicable);

    1.1.6. contact details (including full name, job title, telephone number and email address) for primary and secondary points of contact within the Client; and

    1.1.7. any other information that Visualsoft indicates to be necessary,

    following which Visualsoft shall create an account for the Client ("**Account**").

    1.2. The Client agrees to keep the information provided to Visualsoft under clause 1.1 of this Section 2 (Platform) up to date during the Term.

    1.3. The Client is solely responsible for any and all activity undertaken on the Account, and shall ensure the security of login credentials. Visualsoft is not responsible for any loss or damage caused by the Client's failure to maintain the security of the Account.

    1.4. The Account is provided for the Client's use in connection with carrying out a business activity. Visualsoft does not provide the Platform (or any other aspect of the Services) for personal, household or other use.

    1.5. The Client shall ensure that Visualsoft has access to the Account at all times and shall provide Visualsoft with any administrator credentials for the Account immediately on Visualsoft's request.

2. **Website**

    2.1. As part of the Platform, Visualsoft will provide the Client with the Website. Unless otherwise agreed in writing with Visualsoft:

    2.1.1. the front end design of the Website shall be determined solely by Visualsoft, except to the extent that its content consists of the Client Materials; and

    2.1.2. the back end design of the Website shall be determined solely by Visualsoft.

2.2.   Unless otherwise agreed, the Client shall:

2.2.1.   maintain any and all product feeds on the Website;

2.2.2.   apply for, renew and otherwise manage the domain name of the Website;

2.2.3.   set up and maintain any and all:

2.2.3.1.   email accounts in relation to the Website;

2.2.3.2.   URL forwarding or redirect services in relation to the Website;

2.2.3.3.   hyperlinks on the Website;

2.2.3.4.   discount codes or promotional offers on the Website;

2.2.3.5.   social network accounts or pages in relation to the Website;

2.2.4.   display any proprietary notices on the Website that Visualsoft reasonably requests from time to time; and

2.2.5.   undertake any other action in relation to the Website that Visualsoft determines to be reasonable given the circumstances.

2.3.   Visualsoft is not responsible for ensuring that the Website, including the Website's back end and front end design complies with any laws or regulations beyond the Applicable Law, nor is it responsible for ensuring that the Website complies with any sector-specific codes of practice, guidance notes, rules, standards and/or procedures that may be applicable to the Client from time to time.

2.4.   The Client shall be responsible for the operation of the Website and ensuring:

2.4.1.   that the content of the Website (and any other Client Materials incorporated into the Website) does not infringe any Applicable Laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("**Inappropriate Content**"); and

2.4.2.   the accuracy and completeness of the content of the Website (and any other Client Materials incorporated into the Website).

2.5.   The Client acknowledges that Visualsoft has no control over any content placed on the Website by visitors and does not monitor the content of the Website. Visualsoft reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content. Visualsoft shall notify the Client promptly if it becomes aware of any allegation that any content on the Website may be Inappropriate Content.

2.6. Where the Client fails to provide any Client Materials in accordance with Visualsoft's request, Visualsoft may deploy alternative materials on the Website in place of such Client Materials ("**Substitute Materials**"). Visualsoft gives no warranty with respect to any Substitute Materials (including that use of Substitute Materials will not infringe the Intellectual Property Rights of a third party) and the Client shall be responsible for any Substitute Materials as if they were Client Materials.

2.7. Unless otherwise agreed in writing with Visualsoft, the Platform is provided on an "as is" basis. Visualsoft does not warrant that the Platform will be uninterrupted, timely, secure or error-free, or that they will not contain any Virus or Vulnerability.

2.8. The parties acknowledge that the Platform is not a marketplace and that Visualsoft has no relationship with the Client's customers or potential customers.

2.9. The Client acknowledges that any wording or documents that Visualsoft provides to the Client as part of the Platform (including the Website) are templates only and the Client is under no obligation to use such wording or documents. Where the Client uses any wording or documents that Visualsoft provides as part of the Platform (including the Website), Visualsoft assumes that the Client has reviewed and approved, and taken independent legal advice in relation to, such wording or documents to ensure that they are suitable for the Client's specific preferences and requirements.

Section 3 - Online marketing services

1. **Supply of services**

    1.1. The Client acknowledges that the Services (or parts of them) may be automated or driven by artificial intelligence and agrees that it shall pay the Fees irrespective of the methods that Visualsoft deploys to deliver the Services.

    1.2. Visualsoft may, in its sole discretion, authorise the Client to substitute all or part of the Services for another service offered by Visualsoft, provided that the Fee for the replacement service is the same or less than the Service or Services that the Client intends to substitute. Under no circumstances shall the Client be entitled to substitute the Service or Services for a cash or other alternative, unless otherwise agreed in writing with Visualsoft. The Client acknowledges that the Services are subject to availability and that it may not be possible to accommodate the Client's request for a change to the scope of the Services. Any changes to the scope of the Services are subject to the prior written agreement of the parties.

    1.3. Unless otherwise agreed in writing with Visualsoft, the Client must use any Services by the relevant Expiration Date and Client shall not be permitted to rollover any unused Services beyond the relevant Expiration Date. For the avoidance of doubt, where the Client contracts with Visualsoft for Visualsoft to provide certain Services and those Services are not used by the Client before the Expiration Date, Visualsoft shall have no obligation to perform such Services but the Client shall remain liable to pay the Fees for such Services.

2. **Fees and payment**

    2.1. The parties acknowledge and agree that:

        2.1.1. unless otherwise agreed in writing with Visualsoft, the Services are provided for a fixed sum, and not on a time and materials basis. The Fees specified in the Project Agreement are payable by the Client for the delivery of the relevant Services. For example, if the Project Agreement states that the Fee for a particular Service is £600 plus VAT, the Client shall be obliged to pay £600 plus VAT upon Visualsoft's delivery of that Service, regardless of the amount of time it has taken Visualsoft to deliver the relevant Service;

        2.1.2. the Client's obligation to pay for a particular Service arises upon Visualsoft's delivery of that Service (or, where applicable, after the Expiration Date where the Client fails to use the Services prior to the Expiration Date or Visualsoft is prevented from performing the Services due to a Client Default); and

2.1.3. the Client's obligation to pay the Fees is not contingent on the Client's approval of the relevant Services.

2.2. Where a Client Default prevents Visualsoft from performing any Services prior to the Expiration Date of those Services, the Client shall be liable to pay the Fees for such Services irrespective of whether or when they are actually performed (and if the Client requires Visualsoft to perform the relevant Services at a later date, an additional Fee shall be payable).

3. Intellectual property rights

In addition to the licence granted to the Client in accordance with clause 6.2 of Section 1 (General Terms and Conditions), Visualsoft grants to the Client a fully paid-up, worldwide, non-exclusive, royalty-free licence during the Term to use Visualsoft's Intellectual Property Rights for the purposes of copying and modifying the Deliverables in the course of the Client's normal business operations.

Section 4 - Affiliate network

1. Affiliate account

1.1. To access and use the Affiliate Network, the Client shall provide Visualsoft with:

    1.1.1. the Client's registered company name;

    1.1.2. the Client's registered company number;

    1.1.3. the Client's registered office address;

    1.1.4. the Client's principal place of business (if different to the Client's registered office address);

    1.1.5. the Client's VAT number (if applicable);

    1.1.6. contact details (including full name, job title, telephone number and email address) for primary and secondary points of contact within the Client; and

    1.1.7. any other information relating to the Client that Visualsoft indicates to be necessary,

following which Visualsoft shall create an account for the Client ("**Affiliate Network Account**").

1.2. In order to ensure the effective launch of the Affiliate Network Account, the Client shall, within 10 Business Days of the Commencement Date:

    1.2.1. integrate the Tracking System into the Website;

    1.2.2. confirm to Visualsoft what Commission Fee will be applicable to each Participating Affiliate; and

    1.2.3. provide any other information that Visualsoft indicates to be necessary, including product feeds and image-based creative.

1.3. The Client agrees to keep the information provided to Visualsoft under clause 1.1 of this Section 4 (Affiliate Network) up to date during the Term.

1.4. The Client is solely responsible for any and all activity undertaken on the Affiliate Network Account, and shall ensure the security of the Client's login credentials. Visualsoft is not responsible for any loss or damage caused by the Client's failure to maintain the security of the Affiliate Network Account.

1.5. The Affiliate Network Account is provided for the Client's use in connection with carrying out a business activity. Visualsoft does not provide the Affiliate Network Account (or any other aspect of the Services) for personal, household or other use.

1.6.   The Client shall ensure that Visualsoft has access to the Affiliate Network Account at all times and shall provide Visualsoft with any administrator credentials for the Affiliate Network Account immediately on Visualsoft's request.

2.   Affiliate network

2.1.   As part of the Services, Visualsoft will provide the Client with access to the Affiliate Network.

2.2.   Unless otherwise agreed in writing with Visualsoft, the Affiliate Network is provided on an "as is" basis. Visualsoft does not warrant that the Affiliate Network, or any other aspect of the Services, will be uninterrupted, timely, secure or error-free, or that they will not contain any Virus or Vulnerability.

2.3.   The Client acknowledges that:

2.3.1.   the Contract does not govern the contractual relationship between Visualsoft and any Participating Affiliate;

2.3.2.   the Client shall not pay any fee (including the Commission Fee) directly to a Participating Affiliate;

2.3.3.   during the Term, the Client shall not enter into, or attempt to enter into, any agreement, contract or arrangement with a Participating Affiliate for the provision of any services the same as, or similar to, the Services outside the Affiliate Network; and

2.3.4.   the Client shall not enter into, or attempt to enter into, any agreement, contract or arrangement with a Participating Affiliate that would prevent or otherwise impact the relevant Participating Affiliate's promotion of other clients participating in the Affiliate Network.

2.4.   The Client acknowledges and agrees that it does not have any contractual relationship with any Participating Affiliate. If the Client has any complaints relating to the Affiliate Network or any Participating Affiliate (including in relation to the behaviour of a Participating Affiliate or the rate of a Commission Fee) ("**Complaint**"), it shall notify Visualsoft in writing and Visualsoft shall attempt to resolve such Complaint. The Client acknowledges and agrees that Visualsoft shall not be obliged to resolve any Compliant where there has not been a breach of the Contract by Visualsoft. Visualsoft's decision with respect to any Complaint shall be final and binding on the Client, and shall be the sole and exclusive remedy available to the Client in the event of any Complaint.

2.5.   The Client acknowledges that a Participating Affiliate may leave the Affiliate Network, or vary or end its relationship with the Client, at any time and for any reason. Any such decision is solely determined by the relevant Participating Affiliate. Visualsoft shall not be liable to the Client for the acts or omissions of any Participating Affiliate.

3. Validating transactions

3.1. The Client acknowledges that it is solely responsible for the validation of Transactions prior to the expiry of the Force Approval Period.

3.2. Any and all automation implemented by the Client or Visualsoft is intended as a guide only, and the Client acknowledges that it does not replace the need for the Client to manually review any and all Transactions to ensure that, where applicable, a rejected Transaction is marked as such prior to the expiry of the Force Approval Period.

3.3. The Client acknowledges that it may receive a transaction query from a customer via the Affiliate Network. Each transaction query has its own Force Approval Period, which may differ from the original Force Approval Period. The Client acknowledges that it is solely responsible for the validation of any transaction queries in the same way that it is for other Transactions. In the event that a transaction query is not marked as rejected prior to the expiry of the Force Approval Period, the Client acknowledges that the relevant transaction query will be validated as approved and it shall become a Validated Transaction.

3.4. The Client shall have no right to recover from Visualsoft or any Participating Affiliate any Commission Fees paid in relation to a Validated Transaction. The Client hereby waives and forever releases and discharges Visualsoft and any Participating Affiliate from any claims that the Client has, or may have, for recovery or reversal of any Commission Fees paid to Visualsoft in respect of Validated Transactions.

3.5. The Client acknowledges that it shall only validate a Transaction, or allow a Transaction to be validated through expiration of the Force Approval Period, once it is certain that the Transaction is valid, bona fide and not subject to any contractual, regulatory or statutory right of a customer to return the relevant goods and/or services, receive a refund (in whole or in part) and/or otherwise reverse, cancel or terminate the relevant Transaction.

4. Exclusivity

During the Term, the Client shall not directly or indirectly enter into, or attempt to enter into, any agreement, contract or arrangement for the provision of any services the same as, or similar to, the Services.

5. Visualsoft's obligations

5.1. Visualsoft shall:

5.1.1. provide the Affiliate Network to the Client in accordance with the Applicable Law, the Proposal and the Project Agreement, in all material respects;

5.1.2. subject to the Client's compliance with these Terms of Business, provide the Client with access to the Affiliate Network;

5.1.3. in its sole discretion, make available to the Client a suitable list of the Participating Affiliates; and

5.1.4. use reasonable endeavours to procure that the Participating Affiliates remove or revise the Client Materials in accordance with the Client's written instructions.

6. The client's obligations

6.1. The Client shall:

6.1.1. ensure that any and all information provided to Visualsoft in relation to the Affiliate Network is complete, accurate and not misleading;

6.1.2. comply with all applicable laws and regulations relevant to its receipt and/or use of the Affiliate Network;

6.1.3. co-operate with Visualsoft in any manner reasonably required by Visualsoft in order to provide the Affiliate Network, including in relation to the provision of all information (such as seasonal strategy) and/or materials requested within the timeframe specified by Visualsoft;

6.1.4. obtain and maintain all licences, permissions and/or consents required for the Affiliate Network;

6.1.5. provide prior written notice of any material changes to the Website or any other aspect of the Client's activities, including any planned downtime or removal of key trading features, which may affect the Affiliate Network;

6.1.6. pay all applicable Commission Fee(s) to Visualsoft on behalf of the relevant Participating Affiliates;

6.1.7. pay the Network Fee to Visualsoft;

6.1.8. pay the Override Fee(s) to Visualsoft; and

6.1.9. pay any Reintegration Fee(s) to Visualsoft.

Section 5 - Definitions and interpretation

1. **The client's obligations**

   1.1. The following definitions apply to these Terms of Business:

"Acceptable Use Policy"	the acceptable use policy applied by Visualsoft from time to time, as appearing at www.visualsoft.co.uk/acceptable-use-policy;
"Affiliate Network"	the system provided by Visualsoft, which enables the Client to manage various aspects of the Client's affiliate marketing;
"Affiliate Network Account"	as defined in clause 1.1 of Section 4 (Affiliate Network);
"App"	to the extent that it is included as part of the Services, the mobile application(s) provided to the Client by Visualsoft, which consists of a front-end and back-end developed by Visualsoft;
"Account"	as defined in clause 1.1 of Section 2 (Platform);
"Applicable Law"	all laws, statutes, statutory instruments, directives, regulations, orders, rules, by-laws domestic legislation in force in the United Kingdom from time to time;
"Business Day"	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
"Client"	the person who purchases the Services from Visualsoft, as specified in the Project Agreement;
"Client Data"	any and all data provided by the Client to Visualsoft, which Visualsoft may process and/or retain when providing the Services;
"Client Default"	as defined in clause 6.6 of Section 1 (General Terms

and Conditions);

"Client Materials"	any and all documents, information, items or materials, in whatever form or medium, that the Client provides to Visualsoft in connection with the Services (whether owned by the Client or a third party);
"Commencement Date"	as defined in clause 3.2 of Section 1 (General Terms and Conditions);
"Commission Fee(s)"	in relation to the Affiliate Network, the payment (exclusive of VAT and delivery costs) that the Participating Affiliate will receive from the Client in respect of the relevant Validated Transaction(s), which the Client will pay to Visualsoft on the Participating Affiliate's behalf and which Visualsoft will thereafter pay to the Participating Affiliate;
"Confidential Information"	any and all information of a confidential nature, in whatever form or medium, disclosed by the disclosing party to the receiving party, whether before, on or after the Commencement Date, including (i) commercial or technical know-how, technology, or information pertaining to business operations and strategies, (ii) information pertaining to customers, clients, suppliers, pricing, marketing, business or affairs, (iii) information relating to the Services or any of their constituent parts, including the Source Code, and/or (iv) any other information that ought reasonably to be deemed confidential (whether or not it is marked "confidential") or proprietary;
"Contract"	the contract between Visualsoft and the Client, pursuant to which Visualsoft provides the Services, consisting of the Project Agreement and these Terms of Business;
"Contract Year"	a 12-month period commencing on the Commencement Date or any anniversary of it;
"Controller"	as defined in the Data Protection Legislation;

"Data Processing Schedule"	the data processing schedule, as appearing at www.visualsoft.co.uk/data-processing-schedule;
"Data Protection Legislation"	all applicable data protection and privacy legislation in force in the United Kingdom from time to time, including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (as amended);
"Data Subject(s)"	as defined in the Data Protection Legislation;
"Deliverable(s)"	any and all tangible or intangible items or materials produced for the Client by Visualsoft as part of the Online Marketing Service(s);
"Extended Term"	as defined in clause 4.2 of Section 1 (General Terms and Conditions);
"Expiration Date"	the last Business Day of each calendar month of the Term or the date that Visualsoft otherwise notifies to the Client in writing;
"Export Control Laws"	as defined in clause 20 of Section 1 (General Terms and Conditions);
"Fair Use Policy"	the fair use policy applied by Visualsoft from time to time, as appearing at www.visualsoft.co.uk/fair-use-policy;
"Fees"	the fees payable in consideration for the Services, as specified in the Project Agreement;
"Force Approval Period"	the 30 day period during which the status of the Transaction can be altered or rejected, thus preventing the Commission Fee from being paid;
"Force Majeure Event"	as defined in clause 17 of Section 1 (General Terms and Conditions);
"Inappropriate Content"	as defined in clause 2.4.1 of Section 2 (Platform);
"Initial Term"	as defined in clause 4.2 of Section 1 (General Terms and Conditions);

"Intellectual Property Rights"	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, 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;
"Network Fee"	the network fee payable by the Client to Visualsoft to use the Affiliate Network, as specified in the Project Agreement;
"Online Marketing Service(s)"	the online marketing service(s) provided by Visualsoft, including the Deliverables, as specified in the Project Agreement;
"Override Fee(s)"	in relation to the Affiliate Network, a percentage of the Validated Transaction(s) payable by the Client to Visualsoft, as specified in the Project Agreement;
"Participating Network"	any and all affiliates in the Affiliate Network;
"Personal Data"	as defined in the Data Protection Legislation;
"Personal Data Breach"	as defined in the Data Protection Legislation;
"Platform"	the eCommerce platform provided by Visualsoft, including the Website(s);
"Processor"	as defined in the Data Protection Legislation;
"Proposal"	the final form proposal document between Visualsoft and the Client;
"Project Agreement"	the project agreement entered into by Visualsoft and the Client;

"Regulatory Standards"	any standards, technical specifications, national technical rules, rule books and other codes of practice, guidance notes, rules, standards or procedures applicable to the Services;
"Re-integration Fee"	in relation to the Affiliate Network, the charge payable by the Client if the Client has previously closed or ceased using the Affiliate Network, as specified in the Project Agreement;
"Section"	Section 1 (General Terms and Conditions), Section 2 (Project), Section 3 (Online Marketing Services), Section 4 (Affiliate Network) and/or Section 5 (Definitions and Interpretation), as applicable;
"Services"	the services provided by Visualsoft, including the Platform, the Online Marketing Services and/or the Affiliate Network, as specified in the Project Agreement;
"Source Code"	the source code of the Website, in the language in which the software is written;
"Term"	the term of the Contract, as specified in clause 4 of Section 1 (General Terms and Conditions);
"Terms of Business"	these terms and conditions as amended from time to time in accordance with clause 19 or clause 21.15 of Section 1 (General Terms and Conditions);
"Third Party Services"	as defined in clause 5.5 of Section 1 (General Terms and Conditions);
"Tracking System"	in relation to the Affiliate Network, the tracking system that enables, amongst other things, the tracking of transactions and reporting of data, which includes a unique HTTP request specific to each Participating Affiliate that allows a customer to be tracked and redirected to the relevant page on the Website;
"Transaction"	in relation to the Affiliate Network, the purchase by a customer of the Client of any goods and/or services offered for sale by the Client on the Website;
"UK GDPR"	has the meaning given to it in section 3(10) (as

	supplemented by section 205(4)) of the Data Protection Act 2018;
"Validated Transaction(s)"	in relation to the Affiliate Network, a Transaction (i) manually approved by the Client, or (ii) that has not been rejected by the Client before the Force Approval Period has expired;
"VAT"	as defined in clause 7.6 of Section 1 (General Terms and Conditions);
"Virus"	any thing or device (including any software, code, file or programme) which may (i) prevent, impair or otherwise adversely affect the operation of any software, hardware, network or other service or device, (ii) prevent, impair or otherwise adversely affect access to, or the operation of, any programme or data, including the reliability of any programme or data, or (iii) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
"Visualsoft"	Visualsoft Limited, a private limited company registered in England and Wales with company number 03655545, whose registered office is Visualsoft House, Prince's Wharf, Thornaby, Stockton-on-Tees TS17 6QY;
"Visualsoft Intellectual Property Rights"	as defined in clause 8.1 of Section 1 (General Terms and Conditions);
"Vulnerability"	any weakness in the computational logic (including in the Source Code) found in software and/or hardware components of the Platform (including the Website) that, when exploited, results in a negative impact to confidentiality, integrity or availability; and
"Website(s)"	the website(s), as specified in the Project Agreement, consisting of a front end and back end developed by Visualsoft, but excluding the domain name(s), which shall be owned by the Client, unless agreed otherwise in writing with Visualsoft. To the extent that an App is provided as part of the Services, this definition of Website also shall include said App.

1.2.   The following rules of interpretation apply to these Terms of Business:

1.2.1.   A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2.   A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3.   A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative

1.2.4.   provision includes all subordinate legislation made under that legislation or legislative provision.

1.2.5.   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.

1.2.6.   A reference to writing or written includes email.

Teesside HQ
Visualsoft House
Prince's Wharf
Stockton-on-Tees
TS17 6QY

www.visualsoft.co.uk

Visualsoft