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Contedia Limited - Terms and Conditions of Business

1. Basis of Contract

- 1.1 These Conditions apply to each Quotation and Order to the exclusion of any other terms and conditions that the Company or Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 1.2 Each Order consists of an offer by the Customer to purchase the Deliverables and/or Services in accordance with these conditions.
- 1.3 Each Order shall be deemed to be accepted on the earlier of the Company:
 - 1.3.1 Providing a form of formal Order acceptance;
 - 1.3.2 Providing the Deliverables; or
 - 1.3.3 Performing the Services.
- 1.4 Subject to clause 20.1, each Order and these Conditions constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Order and/or these Conditions.
- 1.5 A Quotation for the Deliverables and/or Services given by the Company shall not constitute an offer. A Quotation shall only be valid for a period of not more than 10 (ten) Business Days, but may be withdrawn by the Company at any time and without notice.
- 1.6 If there is any conflict or ambiguity between these Conditions and the Order, the Conditions shall prevail.
- 1.7 If the Customer wishes to obtain additional services from the Company, the Company and the Customer shall follow the process in clauses 1.1. to 1.6 and enter into a further Order which shall also become subject to the Conditions.

2. Term

- 2.1 Subject to the provisions for early termination in clause 22, this Agreement shall continue for the Initial Period and thereafter for successive periods of twelve (12) months until terminated by either part, giving not less than 90 (ninety) days' notice in writing to the other (any such notice to expire on or after the last day of the Initial Period) or otherwise for the period specified in the Order relating to the duration of the supply of Deliverables and Services by the Company to the Customer.

3. Cancellation and Changes

- 3.1 The Customer shall not be entitled to assume that any purported cancellation of an Order, either in full or in part, by the Customer has been accepted by the Company until the Company confirms its acceptance of such cancellation in writing.
- 3.2 All and any loss of expense occasioned to the Company by cancellation of an Order or changes required by the Customer in materials, design, quantities or delivery terms from those on which acceptance of an Order was based shall be met by the Customer. Changes in original specification or Order dictated by the Customer may have a bearing on agreed or provisional delivery dates for which the Company is not liable in any way.

4. Appointment

- 4.1 In consideration of the payment by the Customer of the Charges, the Company shall provide the Services and Deliverables to the Customer during the Term in accordance with these Conditions.

5. Services – General

- 5.1 Prior to delivering any Deliverables to the Customer, the Company shall carry out reasonable checks to ensure that such Deliverables are capable of meeting the requirements of the Specification.

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5.2 The Company shall deliver the Deliverables to the Customer by the applicable date set out in the Specification.

5.3 Any Deliverables will be deemed accepted by the Customer upon either:

5.3.1 Use by the Customer for the purpose by which it was supplied; or

5.3.2 The Customer confirming that it has been accepted in accordance with clause 11.

5.4 If the Company's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees (including failure to deliver Customer Materials to the Company in a timely fashion), the Company shall be granted an extension of time equal to the period of delay, shall not be deemed to be in breach of the Agreement and will not be liable to the Customer as a result of such prevention or delay.

6. Services – Hardware

6.1 Where the Services include the supply of Hardware, this clause 6 shall apply.

6.2 The Customer shall prepare its premises in accordance with any requirements set out in the Specification before the Hardware is delivered to its premises.

6.3 The Customer acknowledges that it is solely responsible for preparing and maintaining its premises as a suitable environment for the Hardware.

6.4 The Customer shall, irrespective of any action of the Company, be solely responsible for preparing and maintaining its premises as a proper and safe operating environment in which the Hardware is to operate.

6.5 Risk of damage to or loss of the Hardware shall pass to the Customer on delivery of the Hardware at its premises.

6.6 Legal and beneficial ownership of the Hardware shall not pass to the Customer until the Company has received in full in cleared funds:

6.6.1 All sums due to it in respect of the Hardware; and

6.6.2 All other sums which are, or which become, due to the Company from the Customer under this Agreement.

6.7 Until ownership of the Hardware has passed to the Customer, the Customer shall:

6.7.1 Hold the Hardware on a fiduciary basis as the Company's bailee;

6.7.2 Store the Hardware (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that it remains readily identifiable as the Company's property;

6.7.3 Not destroy, deface or obscure any identifying mark or packaging on or relating to the hardware; and

6.7.4 Keep the Hardware insured for its full price against all risks to the reasonable satisfaction of the Company, ensure that the Company's interest in it is noted on the relevant insurance policy, whenever requested by the Company produce a copy of the policy of insurance to the Company and procure that any insurance proceeds received in respect of lost or damaged Hardware are paid to the Company, to the extent required to satisfy the indebtedness of the Customer or Company.

6.8 The Customer may use the Hardware in accordance with the terms and conditions of this Agreement before ownership has passed to it.

6.9 The Customer's right to possession and use of the Hardware shall terminate immediately if, before ownership of the Hardware passes to the Customer in accordance with clause 6.6:

6.9.1 The Customer suffers an Insolvency Event;

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6.9.2 The Customer fails to pay any sum due to the Company under this Agreement on or before the due date; or

6.9.3 This Agreement terminates for any reason.

6.10 The Company shall be entitled to recover payment for the Hardware (including by way of court action) notwithstanding that ownership of any of the Hardware has not passed from the Company.

6.11 The Company reserve the right, at its discretion, to reclaim Hardware where payment is overdue, having given due notice, in which case the Customer shall be liable for a re-stocking charge of 30%.

6.12 The Customer grants the Company, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Hardware is or may be stored in order to inspect it, or where the Customer's right to possession and use has terminated, to recover it.

6.13 The Company shall pass on to the Customer the benefit of any third-party manufacturer's warranty that applies to the Hardware, details of which will be supplied with the Hardware or can be readily established.

7. Services – Software

7.1 Where the Services include the supply of Software, this clause 7 shall apply.

7.2 The Company shall provide the Customer with all Software Licence Terms, and the Customer agrees to be bound by the Software Licence Terms and to use reasonable endeavours to ensure that its end users are bound under similar obligations owed to the relevant third parties.

7.3 The Customer shall indemnify and hold the Company harmless against any loss or damage which it suffers or incurs as a result of the Customer's breach of any Software Licence Terms howsoever.

7.4 The Company may treat the Customer's breach of any Software Licence Terms as a breach of their Agreement for the purpose of clause 21.

7.5 The Customer shall:

7.5.1 Ensure that the number of persons using the Software does not exceed that charged for on the monthly or otherwise recurring or one-time invoice.

7.5.2 Ensure that the Software is installed on designated equipment only;

7.5.3 Keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Company on request from time to time;

7.5.4 Notify the Company as soon as it becomes aware of any unauthorised use of the Software by any person; and

7.5.5 Pay, for broadening the scope of the licence of the Software to cover the unauthorised use, an amount equal to the fees which the Company would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced.

7.6 The Customer shall permit the Company to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with the licence of the Software, for the purpose of ensuring that the Customer is complying with the terms of this clause 7, provided that the Company provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

7.7 The Company will provide the Customer with all Maintenance Releases generally made available to its customers. The Company warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

8. Services – IT and Telephone Systems Maintenance and Support Services

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- 8.1 Where the Services include IT and/or Telephone System Maintenance and Support Services, this clause 8 shall apply.
- 8.2 The Company shall supply, and the Customer shall take and pay for, the IT and/or Telephone System Maintenance and Support Services.
- 8.3 The Company may, on prior notice to the Customer, make changes to the IT and/or Telephone System Maintenance and Support Services, provided such changes do not have a material adverse effect on the Customer's business operations.

9. The Company's Obligations

- 9.1 The Company shall:
- 9.1.1 Use reasonable endeavours to ensure that the Services are performed by employees of the Company possessing reasonable skills and experience;
- 9.1.2 Use reasonable endeavours to comply with any dates specified in the Order and/or Specification from commencement, performance or completion of the Services (or any part of them), but time shall not be of the essence of this Agreement;
- 9.1.3 Supply the Services and the Deliverables in accordance with all Applicable Laws with which it is bound to comply;
- 9.1.4 Obtain, at its own expense, the licenses, powers and consents necessary for it to perform its obligations under this Agreement;
- 9.1.5 Comply with all reasonable standards of safety and comply with the Customer's health and safety procedures from time to time in force at the premises where the Services are provided (if applicable).

10. Customer's Obligations

- 10.1 To enable the Company to comply with its obligations and responsibilities under this Agreement, the Customer shall:
- 10.1.1 Provide all assistance, information, and advice which the Company may reasonably require; and
- 10.1.2 Do all acts which the Company may reasonably request.
- 10.2 The Customer shall:
- 10.2.1 Provide the Customer Materials and any such information as the Company may reasonably require in a timely manner and ensure it is correct in all material respects;
- 10.2.2 Provide reasonable co-operation and assistance to the Company in respect of the Company's provision of the Services and Deliverables;
- 10.2.3 Provide such access to its premises and equipment as may be reasonably required by the Company in respect of the Company's provision of the Services and Deliverables;
- 10.2.4 Comply with Applicable Laws with which it is bound to comply in its use of the Services and Deliverables;
- 10.2.5 Obtain and shall maintain all necessary licences, consents, and permissions necessary for the Company, its contractors and agents to perform their obligations under this Agreement;
- 10.2.6 Ensure that its network and systems comply with the relevant specifications provided by the Company from time to time; and
- 10.2.7 Be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Company's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

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10.3 The Customer acknowledges that the Company's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer provides to the Company. Accordingly, the Customer shall provide the Company with access to, and use of, all information, data and documentation reasonably required by the Company for the performance by the Company of its obligations under this Agreement.

11. Acceptance

11.1 Where the Services and/or Deliverables are expressly specified to be subject to Acceptance Tests in the Specification, the Company shall undertake the Acceptance Tests to determine whether the Services and/or Deliverables have met their Acceptance Criteria.

11.2 The Company shall carry out the Acceptance Tests using the Acceptance Criteria at a time to be agreed in writing with the Company. The Customer shall attend and observe the Acceptance Tests where appropriate.

11.3 The Customer shall not unreasonably withhold or delay its agreement that the Services and/or Deliverables meet their Acceptance Criteria.

11.4 If the Services and/or Deliverables fail to pass the Acceptance Tests, the Company shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within 10 Business Days of such failure in accordance with clauses 11.2 and 11.3.

11.5 If the Services and/or Deliverables fail to pass any repeated Acceptance Tests, the Customer may, by written notice to the Company, choose at its sole discretion:

11.5.1 To permit the Company an extension of time to remedy any remaining defects and deficiencies and undertake such further Acceptance Tests as necessary;

11.5.2 To accept the Services and/or Deliverables (or any part of them) subject to such amendment of the Specification and/or reduction in the Charges as, after considering all the relevant circumstances, is reasonable; or

11.5.3 Reject the Services and/or Deliverables as not being in conformity with the Agreement, in which event the Customer may terminate this Agreement.

11.6 The Customer shall be deemed to have accepted that the Services and/or Deliverables have met their respective Acceptance Criteria on the earliest of:

11.6.1 The Customer's written agreement to that effect;

11.6.2 The expiry of (one) Business Day after successful completion of the relevant Acceptance tests, unless the Services and/or Deliverables do not meet their respective Acceptance Criteria;

11.6.3 The live use of the Deliverables (or the relevant part of them) by the Customer or any of its employees, agents or contractors.

12. Delivery

12.1 Delivery commitments are entered into in good faith, but the Company shall not be liable for failure to deliver on the specified date, nor shall such failure be deemed to be a breach of the Agreement, or any of its conditions, or part thereof.

12.2 Where the Agreement calls for delivery by instalments, or where the Company elects to make delivery by instalments, each instalment shall be regarded as a separate Agreement and any defect in any instalment or failure to deliver any instalment shall not give the Customer the right to cancel the balance of deliveries due under this or any other Agreement between the parties.

13. Damage and Shortages

13.1 Claims for damage or shortages will only be entertained when received by the Company in writing with 24 hours of receipt of Hardware.

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14. Contract Management

- 14.1 Each Party will designate a contract manager who will have day to day responsibility for the performance of their appointor's obligations under this Agreement.
- 14.2 Each party will promptly give the other party details of the person appointed and any changes in that appointment from time to time.
- 14.3 Each party shall ensure that:
- 14.3.1 Its contract manager is available for consultation by the other party at all reasonable times; and
- 14.3.2 Its contract manager and any other relevant personnel attend all meetings reasonably requested by the other party.
- 14.4 The contract managers shall maintain correspondence by email, by telephone or in person as required and agreed between the parties.

15. Charges and Payment

- 15.1 The Customer shall pay the Company the Charges in accordance with this clause 15.
- 15.2 The Charges are exclusive of VAT, which shall be payable by the Customer to the Company at the rate prescribed by law.
- 15.3 The Charges for recurring Services may be invoiced in-advance on a monthly or otherwise recurrent basis, and the invoice is emailed out automatically, on or close to the 1st day of each month, or a date relevant to the periods of recurrence.
- 15.4 The Customer shall pay each invoice issued to it by the Company at the frequency set out in the Order within 14 (fourteen) days, or the period otherwise specifically stated on the Quotation, of the date of such invoice, in full and in cleared funds in pounds sterling, by electronic transfer to the bank account nominated by the Company from time to time.
- 15.5 Without prejudice to any other right or remedy that the Company may have, if the Customer fails to pay the Company on the due date, the Company may suspend further deliveries, whether part of the same or other Orders, and any Services already in use, without any liability until such time as any overdue amount has been paid.
- 15.6 The Company shall be entitled to withhold, set off or reduce payment of any amounts payable to the Customer by the amounts due to the Company by the Customer under this Agreement.
- 15.7 The Company may increase the subscription, ongoing or recurring Charges every six months (with effect from the date six months after the Start Date) in line with the percentage increase in the Retail Prices Index in the preceding 6-month period. The first such increase may take effect on the date six months after the Start Date and shall be based, on the latest available figure of the percentage increase in the Retail Prices Index.
- 15.8 The Company reserves the right, upon prior written notice to the Customer, to pass through to the Customer any increases in any input costs or third-party charges upon evidence of such cost increases being provided to the Customer.
- 15.9 In the event of the cancellation of an Order by the Company, any deposits paid will be refunded to the Customer.
- 15.10 This clause shall survive termination.

16. Intellectual Property Rights

- 16.1 If the Customer provides things to the Company, that doesn't mean the Company owns them. Both parties acknowledge and agree that the Intellectual Property Rights in the Customer's Materials, and any Customer Software are, and shall remain, the property of the Customer or its respective licensors.

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- 16.2 If the Customer provides things for the Company to use in its Services, the Customer has the right to let the Company use them in the way it says it will use them, or that the Customer asks the Company to, and it gives the Company a license to those things for that purpose. The Customer grants, subject to the terms of this agreement, the Company the non-exclusive right to use the Customer's Materials and the Customer Software for the purpose of exercising the Company's rights or performing its roles, responsibilities, duties and obligations under the Agreement during the term of any Services.
- 16.3 The Company will own the core rights (ownership) to any Deliverables, unless they are Bespoke (and then, subject to clause 15, the Customer will own them), but the Company will provide the Customer with a licence so that it can use them for its internal business purposes (see clause 17 below). The Intellectual Property Rights in the Deliverables and the Software (including all object code and Source Code versions) shall, at the date of commencement of the Services or (if later) on creation of the rights from time to time, vest in the Company unless otherwise agreed in writing in an Order and the subsequent Order Acceptance. The Customer assigns (by way of present and, where appropriate, future assignment) all such Intellectual Property Rights with full title guarantee to the Company. If work effort is expressly agreed in writing in an Order or other service description as being "Bespoke", in each case, then all Intellectual Property Rights created shall instead be deemed to vest in the Customer.
- 16.4 If, in creating Bespoke items of work for the Customer, the Company discovers a more efficient process or way of working, if that improvement doesn't only relate specifically to the Customer and it can't be identified as the source of that improvement, then the Company is allowed to use those things to improve any aspect of its own services generally. Where Bespoke services lead to the creation of Intellectual Property Rights vesting in the Customer, the Company shall be granted a perpetual license to such inventions and improvements in processes or processing and the like that exist, or are contained, within such Intellectual Property Rights only to the extent that those Bespoke materials cannot be traced back to the Customer as the source. For the avoidance of doubt, to the extent that the Customer's branding is present or cannot be removed from the more generic elements of such Bespoke items of work, the Company acknowledges that it would require the Customer's prior written consent in order to re-use those things. To the extent that Bespoke creations can be used to identify the Customer, these shall also be deemed to be the Confidential Information of the Customer. To the extent that Bespoke creations contain more generic elements, which can be separated from the Customer's own branding and other materials, the Company shall not be restricted in its re-use of Bespoke creations to the extent that its own Services can be generally improved by further use of such discoveries, inventions and improvements existing in those Bespoke works howsoever created.
- 16.5 The Company provides its work to the Customer in return for payment, and because it is a business, it may withhold the delivery of its work product generally to protect its own interests where that is commercially reasonable for it to do so, and usually until the Customer has paid the Company in cleared funds of any monies it owes to the Company. This means that the Customer will get the things it needs to use all Bespoke work when the Project is completed and after it has paid for it in full, but not beforehand. Where Bespoke creations result in Bespoke Software being produced for the Customer then, subject to payment of all relevant fees and charges relating to the Project, the Customer shall be provided with all applicable Bespoke Source Code for such Bespoke Software at the time the relevant Services and/or all Deliverables are delivered or completed.
- 16.6 If either party needs to make the legal position around ownership of Deliverables more clear for some reason, before Project Completion, both Parties will work together to do what is reasonably required in the circumstances to achieve that clarity. The Customer shall do and execute, or arrange for the doing and executing of, each act, document and thing that the Company may consider necessary or desirable to perfect the right, title and interest of the Company in and to the Intellectual Property Rights in the Deliverables, including any works in progress if the Agreement is terminated before all Services and Deliverables are completed, and the Company shall likewise offer the same courtesy to the Customer as applicable to vest ownership in any Bespoke creations to the Customer in any such circumstance.
- 16.7 In relation to Bespoke Deliverables, the Company shall, and in relation to Deliverables the Customer shall:

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- 16.7.1 Procure the irrevocable waiver of all moral rights in the Deliverables, to the extent permitted by law;
 - 16.7.2 Ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Deliverables; and
 - 16.7.3 Be responsible for ensuring that written agreements are entered into with, and adhered to by, employees and subcontractors engaged in the performance of this agreement and that, unless otherwise agreed with the other party in writing in advance, the terms of engagement of such employees and subcontractors are consistent with, and enable each party to fully to comply with, the provisions as to the Deliverables set out in this agreement, including this clause 16.
- 16.8 The Customer shall use reasonable endeavours to prevent any infringement of the Company's Intellectual Property Rights in the Services, Software or the Deliverables and shall promptly report to the Company any such infringement that comes to its attention.
- 16.9 Each party shall indemnify, keep indemnified and hold harmless the other party from and against all claims and all direct liabilities, costs, proceedings, damages and expenses suffered or incurred by the other party as a result of, or in connection with, any claim that the provision of:
- 16.9.1 The Services and/or Deliverables by the Company or the Customer's use of them in accordance with this Agreement; or
 - 16.9.2 The Customer Materials by the Customer, or the Company's use of them, infringes the Intellectual Property Rights or other proprietary rights of any person.
- 16.10 This clause shall survive termination.

17. License

- 17.1 The Company grants, subject to the terms of this Agreement, the Customer and its affiliates a perpetual and non-exclusive, non-transferable right (subject to any conditions as to assignment as agreed from time to time) to use the Software, Documentation and the Deliverables in or alongside the Customer Systems for any purpose related to the Customer's business operations.
- 17.2 The Customer may make such copies of the Software and Documentation as are reasonably necessary for use in accordance with this agreement and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Software and Documentation except as strictly required in order to effectively and permanently migrate the Customer Systems from one production environment to another.
- 17.3 The Company shall at all times own, or shall have a suitable license in place regarding, all copies of all or any part of the Software. The only exception to this is the use of Open-Source Software which, given the nature of things like Wordpress and other services which utilise copyleft style Open-Source Software licences, may mean that the source code for modifications to that code might have to be made publicly available upon request in some instances and the Customer acknowledges that its use of such Software may be subject to additional Open-Source Software license terms. The Company shall provide reasonable assistance to the Customer in identifying its use of Open-Source Software upon reasonable request by the Customer.
- 17.4 The Customer shall:
 - 17.4.1 Promptly review and agree any third-party software licensing terms where required;
 - 17.4.2 Ensure that all proprietary notices contained in the Software will be maintained in such copies and will display when the software is run, in the same way as in the case of the Software as supplied by the Supplier; and
 - 17.4.3 Take all reasonable precautions to prevent any unauthorised access to any copy of the Software.

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- 17.5 The Customer shall not:
- 17.5.1 Sub-license, rent, lend, assign or transfer in any other way this agreement or the Software to any person without the prior written consent of the Supplier; and
- 17.5.2 Give access to the Software through any network of computers to users who are not employees or agents of the Customer.
- 17.6 The Customer may use the Software with other software.
- 17.7 The Customer may make adaptations or variations of the Software where that Software is either provided as Bespoke to the Customer, or where any perpetual license applies, subject always to the terms of any applicable Open-Source Software or Third-Party Software license.
- 17.8 The Customer may only disassemble, decompile, reverse translate or in any other manner decode any applicable Software where strictly permitted by applicable laws.
- 17.9 If the Customer makes any modification to the Software pursuant to sub-clauses 17.6, 17.7 or 17.8 (“Modification”) above then, to the extent that such Modification has caused any malfunction or defect, the Company’s warranties shall be null and voided in their entirety unless the Customer has acquired the Company’s prior approval in relation to such Modifications. Where the Customer requests the Company to remedy any defect that is later found to be a result of a Modification, the Company shall be entitled to recover its reasonable costs of discovery/fix of such defect at its then-current standard Rates.

18. Data Protection

- 18.1 The Customer shall own all right, title and interest in and to all of the Customer Data (and any licenses which pertain to such Customer Data) and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 18.2 The Company may collect and process Customer Data in its capacity as controller. The Customer may collect and process information relating to the employees of the Company in its capacity as controller. If a party collects personal data, it shall do so in accordance with its privacy notice, a copy of which will be provided by a party within 10 Business Days following a written request.
- 18.3 The Company may also process Customer Data in its capacity as a Data Processor (defined below) when providing the Services. Where the Company acts as a Data Processor, the following provision of this clause 18 shall apply.
- 18.4 Each party shall comply with applicable requirements of the Data Protection Legislation. This clause 17 is in addition to and does not replace a party’s obligations under the Data Protection Legislation. The terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**”, “**Process**” and “**Processing**” have the meanings prescribed in the Data Protection Legislation.
- 18.5 For the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Company is the Data Processor. The Order sets out the scope, nature and purpose of processing by the Company, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 18.6 The Company shall:
- 18.6.1 Process Personal Data only on written instructions of the Customer. If the Company is required by any Applicable Laws to process Personal Data it shall, to the extent legally permitted, notify the Customer before doing so;
- 18.6.2 Have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of, accidental loss or destruction of or damage to Personal Data;
- 18.6.3 Ensure that any transfer of Personal Data outside of the European Economic Area takes place only on documented instructions of the Customer and that the organisations to which the Personal Data is transferred ensure an adequate level of protection;

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- 18.6.4 Ensure that personnel who have access to or process Personal Data keep the Personal Data confidential;
- 18.6.5 Assist the Customer to respond to any request from a Data Subject and to provide reasonable assistance to the Customer complying with its obligations pursuant to Articles 32 to 36 of GDPR;
- 18.6.6 Notify the Customer without undue delay of a Personal Data breach;
- 18.6.7 At the written direction of the Customer, delete or return Personal Data to the Customer on termination of this agreement unless the Company is required by law to store the Personal Data; and
- 18.6.8 Maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Customer or the Customer's designated auditor, provided that the Customer shall provide reasonable notice of audits, shall carry out audits no more than once per year (except where the Customer believes, acting reasonably that the Company has breached the Data Protection Legislation) and shall be responsible for the costs of the audit except where the audit reveals that the Company has materially breached the Data Protection Legislation.
- 18.7 If the Company wishes to appoint a third-party processor, it shall seek prior written consent from the Customer (such consent not be unreasonably withheld or delayed).
- 18.8 The Customer warrants that any Personal Data it provides the Company for the Services is GDPR compliant. The Customer further agrees to indemnify the Company in full from all claims, liabilities, costs, regulatory fines, damages and expenses (including legal expenses) that may arise as a result of any use of such Personal Data where the Company has followed the Customer's instructions in relation to such use.
- 18.9 This clause shall survive termination.
- 19. Confidentiality**
- 19.1 If the parties have entered into a separate non-disclosure agreement in respect of the Services, such non-disclosure agreement shall prevail over clauses 18.2 to 18.5.
- 19.2 Each party shall treat as confidential all Confidential Information of the other party and shall not disclose such Confidential Information to any person other than in accordance with this Agreement.
- 19.3 Neither party shall use any Confidential Information of the other party other than to exercise its rights and perform its obligations under this Agreement.
- 19.4 A Party's Confidential Information shall not be deemed to include information that:
- 19.4.1 Is or become publicly known other than through any act or omission of the receiving party;
- 19.4.2 Was in the other party's lawful possession before the disclosure;
- 19.4.3 Is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- 19.4.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 19.5 Either party may disclose the other's Confidential Information:
- 19.5.1 If and to the extent required by Applicable Law, by any securities exchange or regulatory or governmental body to which that party is subject wherever situated, or for the purpose of any judicial proceedings;
- 19.5.2 To its professional advisers, auditors and bankers; or
- 19.5.3 (In the case of the Company only) to any employee, officer or agent of the Company and any sub-contractor or its employees, officer and employees, only to the extent required for the Company to fulfil its obligations under this agreement, provided that, in the case of clause 19.5.1

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above, the disclosing party shall promptly notify the other party of such requirement (to the extent it is permitted to do so) and such disclosure is on terms that they keep it confidential in compliance with the restrictions set out in this clause 19.

19.6 The Company shall be entitled to refer to the Customer as one of its clients in any of the Company's promotional material.

19.7 This clause shall survive termination.

20. Limitation of Liability

20.1 Nothing in this Agreement excludes the liability of the Company:

20.1.1 For death or personal injury caused by the Company's negligence;

20.1.2 For fraud or fraudulent misrepresentation; or

20.1.3 For any liability to the extent it could be limited or excluded by law.

20.2 Subject to clause 19.1 and clause 19.3:

20.2.1 The Company shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, software or website downtime, or pure economic loss, or for any special indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

20.2.2 The Company's totally aggregate liability in contract (including in respect of the indemnity at clause 15.5), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the aggregate value of the Charges payable by the Customer during the 12-month period preceding the date on which the claim arises (or, if the claim arises in the Initial Term, the aggregate value of the Charges due (at the date the claim arises) to be incurred by the Customer in the Initial Term).

20.3 Except as expressly and specifically provided in this Agreement:

20.3.1 All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

20.3.2 The Services and the Deliverables are provided to the Customer on an "as is" basis without any warranty or representation of any kind.

20.4 This clause shall survive termination.

21. Termination

21.1 Each Party shall be entitled to terminate this Agreement immediately upon giving notice to the other if the other party commits a material breach which is not capable of remedy or, if it is capable of remedy, the breaching party fails to remedy the material breach within thirty (30) Business Days after receipt of notice giving full particulars of the breach and requiring it to be remedied.

21.2 Each party shall be entitled to terminate this Agreement immediately upon giving notice to the other if:

21.2.1 An Insolvency Event applies to the other party; or

21.2.2 A Force Majeure Event continues for a period of (30) thirty Business Days.

22. Consequences of Termination

22.1 Termination of this Agreement shall be without prejudice to any rights and remedies of the parties which have accrued up to the date of termination.

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22.2 On termination of this Agreement:

22.2.1 The relationship of the parties shall cease and any rights or licences granted under or pursuant to this Agreement shall cease to have effect save as (and to the extent) expressly provided for in this clause 22;

22.2.2 Any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;

22.2.3 Each of the parties shall immediately destroy the other party's property in its possession at the date of termination (except any encrypted material which may be needed to demonstrate compliance with Applicable Laws), including its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information.

22.3 This clause shall survive termination.

23. General

23.1 **Force Majeure.** Neither Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any Force Majeure Event, provided that it notifies the other party of the Force Majeure Event and the extent of any resulting delay or prevention and resumes performance of its obligations as soon as reasonably possible following the end of the Force Majeure Event.

23.2 **Notices.** Notices required to be given under this Agreement shall not be sent by email. Notices shall be deemed to have been duly received:

23.2.1 If delivered personally, when left at the registered address of the relevant party or otherwise the address notified by the recipient to the other party in writing; or

23.2.2 If sent by pre-paid first-class post or recorded delivery, at 9.00am on the fifth day (excluding weekends and public holidays) after posting; or

23.2.3 If delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

23.3 **Anti-Bribery, Modern Slavery and Criminal Finances.** Each party shall comply with the Bribery Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 and not do, or omit to do, any act that will cause the other to be in breach of the Bribery Act 2010, the Modern Slavery Act 2015 or the Criminal Finances Act 2017.

23.4 **Assignment and Sub-Contracting.** Neither Party may assign, delegate, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without the prior written consent of the other (such consent not be unreasonably withheld or delays). The Company may sub-contract all or any of its obligations under this Agreement without the consent of the Customer.

23.5 **Out-of-Pocket Expenses.** Services, where applicable, are inclusive of out-of-pocket expenses and reasonable travelling time unless otherwise stated in the Quotation. Out-of-pocket expenses do not include overnight accommodation, associated subsistence or rail or air travel, which will be charged separately at cost, when incurred.

23.6 **Further Assurance.** At any time, each party shall sign all documents and do or cause to be done all further acts and things as that party so requiring may reasonably require to give full effect to the terms of this Agreement. This clause shall survive termination.

23.7 **Third Party Rights.** For the purposes of the Contracts (Rights of Third Parties) Act 1999 no person who is not a party to this Agreement shall have any right to enjoy the benefit or enforce any of the terms of this Agreement. This clause shall survive termination.

23.8 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

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23.9 **Waiver.** Failure to exercise (or to fully exercise), or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy under this Agreement or by law.

23.10 **Severability.** If any Provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction then it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible that provision shall be deemed to be omitted from this Agreement in so far as this Agreement relates to that jurisdiction and the validity and enforceability of that provision in other jurisdictions and other provisions of this Agreement shall not be affected or impaired.

23.11 **Governing Law and Jurisdiction.** This Agreement shall be governed by English Law. The parties agree to submit to the exclusive jurisdiction of the English Courts. This clause shall survive termination.

24. Definitions and Interpretation

24.1 In these Conditions, except where the context otherwise requires, the following definitions apply:

Acceptance Criteria: The Customer's acceptance criteria agreed with the Company and as expressly specified in the Specification;

Acceptance Tests: The test to be carried out on the Services and Deliverables as set out in clause 11;

Agreement: The agreement formed by the Company's acceptance of the Customer's Order;

Applicable Laws: All applicable laws, statutes, regulations and codes from time to time in force;

Bespoke: Deliverables, which are not part of the Company's standard range, and which have been written, developed, manufactured or procured by the Company to the Customer's specific Order, design or Specification;

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

Charges: The charges for the Services and Deliverables payable in accordance with clause 15 and set out in the Order;

Company: Means Contedia Limited, also referred to as "We", "Us", "Contedia", "Seller" or "Supplier";

Conditions: These terms and conditions;

Confidential Information:

- (a) The existence and terms of this Agreement;
- (b) Information concerning the business, Intellectual Property Rights, finances, affairs, customer, clients or suppliers of the other party; and
- (c) Any information that is identified as being of a confidential or proprietary nature or that would be regarded as confidential by a reasonable business person;

Customer: Means the Customer, also referred to as "You" or "Buyer", whose details are set out in the Quotation and/or Order;

Customer Data: Means the data inputted by the Customer, or the Company on the Customer's behalf for the purpose of receipt and use of the Services;

Customer Materials: All documents and materials of any kind, of any form (including hard copy and electronic form, and the Customer Data) for inclusion within the Services howsoever arising, including but not limited to content of the Customer's own clients, the Customer Software, any hardware deployed by the Customer involved in or required to use the Services and any other materials, data or content not originating from the Supplier;

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Customer Software: Any and all software programs and environments, including all interfaces and code pre-dating the order date or otherwise either in the possession of or licensed to the Customer by any third party both before and after the commencement of Services including any software recommended by the Supplier which the Customer procures on its own account or otherwise falling under clause 18.4 but excluding any Software provided by the Supplier as defined below;

Deliverables: Hardware, Software, Bespoke Software, Website, any documents, drawings, designs, photos, graphics, logos, typographical arrangements, and all other materials in any form (including hard copy and electronic form) supplied by the Company or its agents, subcontractors and employees as part of or in relation to the Services;

Data Protection Legislation: In each case to the extent applicable to the Parties and as amended, superseded or updated from time to time: (i) the retained EU law version of GDPR as it forms part of the law of England and Wales, by virtue of the European (Withdrawal) Act 2018, as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments, etc.) (EU Exit) Regulations 2019; (ii) the Data Protection Act 2018; (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (iv) any other applicable data protection and privacy laws;

Force Majeure Event: Any event or circumstances outside the reasonable control of either party affecting its ability to perform any of its obligations under this Agreement including (but not limited to) Act of God, fire, flood, severe weather, epidemic or pandemic, war, revolution, acts of terrorism, riot or civil commotion, trade embargo, strikes, lockouts or other industrial action, and interruption of utility service;

GDPR: The General Data Protection Regulation ((EU) 2016/679);

Hardware: The items of computer equipment listed in the Specification and the operating software embedded within them which is acquired by the Customer from the Company during the Term;

Initial Period: Means the period set out in the Order beginning on the Start Date;

Insolvency Event: Means a party:

- (a) Enters liquidation;
- (b) Has a receiver, liquidator, administrator, trustee of an individual with a similar role appointed over any of its assets; or
- (c) Proposes to make any arrangement with its creditors or goes into liquidation;

Intellectual Property Rights: When used in this Agreement means any current and future intellectual property rights and interest including patents, utility models, designs, design rights, copyright and neighbouring and related rights (including rights in Software), decryption rights, database rights, trademarks and service marks, rights pursuant to passing off, business and trade names, domain names, know-how, topography rights, inventions, rights in confidential information (including technical and commercial trade secrets) and image rights, and rights of a similar or corresponding character in any part of the word, in each case whether registered or not and including any application for registration and 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.;

IT and Telephone Maintenance and Support Services: The IT maintenance and/or support services more particularly described in the Specification, which are to be provided by the Company to the Customer under clause 9;

Open-Source Software: Any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition or any libraries or code licensed from time to time under the General Public Licence, or anything similar;

Order: The Customer's Order for the Deliverables and/or Services as relating and referring to the Company's Quotation;

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Quotation: The Company's formal statement setting out the estimated cost for particular Deliverables and/or Services;

Services: Is an all-inclusive term intended to generally reference the services to be provided by or on behalf of the Supplier under this Agreement howsoever provided;

Software: The computer programs, software, website or modules thereof listed in the Specification and to be developed, and thereby being Bespoke, under this Agreement by the Company, excluding any Customer Software;

Software Licence Terms: The additional terms and conditions set out or referred to in the Specification relating to the Software;

Source Code: The source code of the Software to which it relates, in the language in which the Software was written, together with all related flowcharts and technical documents supplied with that code to understand, develop and maintain it;

Specification: The specification detailing all of the Services and Deliverables to be supplied by the Company to the Customer pursuant to this Agreement as provided with the Quotation or appended to the Order;

Start Date: The date on which the Order is accepted under clause 1.3 or such other date set out in the Order; and

Term: The term of this Agreement as set out in clause 2.1.

24.2 In these terms and conditions (except where the context otherwise requires):

24.2.1 The singular includes the plural and vice versa, and references to any gender includes the other genders;

24.2.2 References to a "person" includes an individual, corporation (whether incorporated or unincorporated), partnership, trust, unincorporated association and any other entity or association of any nature;

24.2.3 Any words following the terms "including", "include", "for example" or any similar expression are by way of illustration and emphasis only and shall not limit the generality or extent of any other words or expressions; and

24.2.4 References to any legislation include any modification or re-enactment of that legislation and any subordinate legislation made (before or after this Agreement) under that legislation.