

TERMS AND CONDITIONS OF BUSINESS ENDLESS PERCEPTION LIMITED

1. Interpretation

1.1 The following words and expressions used herein have the following meanings:

"Affiliate" means any company or entity controlled by, controlling, or under common control of a party to this Agreement. For the purpose of this definition "control" shall mean direct or indirect beneficial ownership of at least fifty per centum (50%) of the equity share capital in such company;

"Contract Date" means the date on which EP agrees to provide Services to the Customer on these Conditions;

"Conditions" means these terms and conditions and includes the Schedule;

"the Customer" means the party for whom the Services are to be provided as more particularly described in Part 1 of the Schedule;

"EP" means Endless Perception International Limited of Albany House, 63 Albany Road, Old Windsor, Berkshire, SL4 2QD;

"EP Personnel" mean those personnel engaged by EP to perform the Services;

"Fees" means the fees to be paid by the Customer to EP for the provision of the Services as more particularly described in part 2 of the Schedule;

"the Schedule" means the schedule to these Conditions which forms part of these Conditions;

"Services" means the services to be provided by EP are more particularly described in Part 3 of the Schedule.

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Terms of contract and variation

2.1 These Conditions shall apply to the provision of the Services to the exclusion of all other terms and conditions.

2.2 These Conditions may only be varied or amended by written agreement of duly authorised personnel of EP and the Customer and any variation or amendment so agreed shall form part of these Conditions.

3. Commencement

3.1 The Services shall be provided at the times on the dates agreed in advance by EP and the Customer ("the Agreed Service Dates").

3.2 EP shall not be liable to the Customer in the event that the commencement of the Services or the delivery of all or any part of the Services is in any way delayed.

4. Cancellation

4.1 In the event that the Customer shall at any time prior to any Agreed Service Date cancel the provision of services to be delivered on that Agreed Service Date EP shall be entitled to charge the Customer a cancellation fee.

4.2 The cancellation fee payable pursuant to clause 4.1 shall be:-

- (a) 50 % of the fees payable by the Customer for the service to be provided on an Agreed Service Date if notice of cancellation is given more than 15 days but less than 45 days from that Agreed Service Date ; and

- (b) 100% of the fees payable by the Customer for the service to be provided on an Agreed Service Date if notice of cancellation is given 15 days or less from that Agreed Service Date .

4.3 For the avoidance of doubt if notice of cancellation is given more than 45 days prior to an Agreed Service Date no cancellation fee shall be payable by the Customer.

4.4 EP may at any time prior to an Agreed Service Date cancel the provision of the Services or any part thereof without any liability to the Customer.

5. Fees and payment terms

5.1 For the provision of the Services the Customer shall pay the Fees to EP

5.2 If the total Fees (excluding VAT and expenses) are:
5.2.1 estimated to be in excess of £2000 the Customer shall within 30 days of the Contract Date an advanced payment ("Advance Payment") to EP amounting to 20% of the estimated total Fees payable for the provision of the Services subject to receipt from EP of an initial invoice ("the Initial Invoice") for this amount. The Advance Payment shall be deducted from the final invoice issued to the Customer by EP.

5.2.2 less than £2000 EP shall invoice the Customer for the total Fees and the Customer shall pay such invoice in full within 30 days of the Contract Date.

5.3 EP shall in its absolute discretion be entitled to invoice the Customer for the Fees upon completion of the whole or any part of the Services or upon termination in accordance with the provisions of clause 11.3 of these Conditions.

5.4 Invoices shall be marked for the attention of the person whose name and address appears in part 4 of the Schedule. Invoices are payable by the Customer within thirty (30) days from date of invoice. Payment shall be made without deduction, deferment, set off, lien or counter claim of any nature.

5.5 Unless otherwise indicated in writing by EP all Fees are exclusive of Value Added Tax or any other applicable taxes which shall be paid by Customer in addition to the Fees.

5.6 EP is preferred payment of invoices is by BACS. Details of EP's bank account are set out in part 4 of the Schedule

5.7 In default of payment on the due date EP shall have the option to charge interest on a daily basis at the rate of 2% per annum above the base rate from time to time of Lloyds TSB PLC on any amount overdue from the day payment falls due until payment is made in full. EP shall in its sole discretion and without prejudice to any other rights or remedies which it may have be entitled to suspend the provision of the Services until payment in full is received or to treat the contract as repudiated by giving notice in writing to the Customer.

6. Expenses

6.1 In addition to the Fees EP shall be entitled to make a charge for all expenses incurred in connection with the provision of the Services. These are more particularly set out in Part 4 of the Schedule. No expenses (other than those set out in Part 4 of the Schedule) shall be invoiced unless prior approval has been obtained from the Customer.

6.2 Expenses shall be invoiced to the Customer in the month in which they are incurred. Copy receipts will be available on request.

7. Relationship Between the Parties

7.1 The Customer retains EP as an independent contractor for the sole purpose of providing the Services.

7.2 No relationship of employer or employee shall arise or be created by or under these Conditions between the Customer and any EP Personnel.

7.3 The Customer acknowledges that EP Personnel engaged to perform the Services are employees or contractors of EP or its Affiliates.

8. Confidentiality

8.1 EP and the Customer agree that information which has been disclosed by one party to the other relating to the products, services and/or business affairs (including details of suppliers, agents, distributors, licensees or customers) of the disclosing party or its Affiliates constitutes confidential information ("Confidential Information"). EP and the Customer each agree to hold each others Confidential Information in strict confidence and disclose it only to those who need to know the same and who are under an obligation to keep the same confidential.

8.2 The obligations of the parties in Clause 8.1 shall not extend to any Confidential Information which (a) is or becomes generally available to the public otherwise than by reason of a breach by the recipient of Clause 8.1 above; or (b) which can be shown by written documentation to have been known prior to its receipt from the other; or (c) is subsequently disclosed to the recipient party without being made subject to an obligation of confidence by a third party; or (d) is required by law to be disclosed and in that event, confidentiality will be preserved and protected to the extent possible. Notice will be provided to the disclosing party prior to such disclosure.

8.3 The obligations of EP and the Customer under this Clause 8 shall survive for a period of two (2) years following termination howsoever occasioned.

9. EP Property

The Customer acknowledges that EP and its Affiliates are in possession of certain assets including without limitation intellectual properties, data, methods, processes, know how, financial information, sales and marketing strategies, computer technical expertise and software which have been independently developed by EP and which relate to its business or operations and which the Customer hereby agrees shall remain the exclusive property of EP.

10. Liability

Neither EP nor the Customer, nor its or their Affiliates, directors, officers, employees, subcontractors or agents shall have any liability (including without limitation, contract, negligence and tort liability) for any loss of profits, opportunities or goodwill or any type of indirect or consequential loss in connection with these Conditions or the Services performed by EP. In no event shall the collective, aggregate liability (including without limitation, contract, negligence and tort liability) of EP or its Affiliates, directors, officers, employees, subcontractors or agents exceed the amount of fees actually received by EP from the Customer.. Nothing herein is intended to exclude or limit any liability for death or personal injury caused by negligence.

11. Termination

11.1 Either party shall have the right to terminate this Agreement if:

11.1.1 the other party commits any material breach of any of the Conditions, and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice of the breach and confirming the intention to terminate if not remedied;

11.1.2 either party shall become bankrupt or insolvent or if all or a substantial part of its business or assets shall be placed in the hands of an insolvency practitioner or analogous officer.

11.2 Termination shall not affect the accrued rights of either party arising under or out of these Conditions and all provisions which are expressed to or by implication survive termination shall remain in full force and effect.

11.3 If this Agreement is terminated by EP in accordance with the provisions of clause 11.1 before the Services have been delivered in full, the Customer shall pay to EP such sum as shall equal 50% of the estimated total Fees payable for the provision of the Services.

12. Force Majeure

Neither party shall be liable to the other for its failure to perform any of its obligations under these Conditions (save for any obligation to pay money) to the extent that such failure is a result of circumstances beyond its reasonable control, provided, however, that the party affected shall exert its reasonable efforts to eliminate or cure or overcome any such circumstances and to resume performance of its obligations with all possible speed.

13. Assignment and Sub Contracting

13.1 This Agreement may not be assigned by EP or the Customer without the prior written consent of the other.

13.2 EP shall be entitled to use agents and sub-contractors (including Affiliates) in the provision of the Services provided that EP will be responsible for the acts and omissions of such agents and sub-contractors as if the Services were performed by EP.

14. Miscellaneous

14.1 Any notice or other communication to be given under these Conditions shall be delivered personally or sent by first-class pre-paid post to the address for the relevant party which appears in these Conditions.

14.2 No failure or delay on the part of EP or the Customer to exercise or enforce any rights conferred on it by these Conditions shall be construed or operate as a waiver thereof.

14.3 Any waiver by EP of its rights in relation to a particular breach of these Conditions shall not operate as a waiver of any subsequent breach.

14.4 Where any provision of these Conditions shall be determined to be invalid, illegal or unenforceable such invalidity, illegality or unenforceability shall not affect any other provision hereof.

15. Governing Law

15.1 This Agreement shall be governed by the laws of England and Wales and the parties hereby submit to the non exclusive jurisdiction of the English courts.