

Standard Terms and Conditions

ClearPeople Limited (ClearPeople) provides software products to business customers. ClearPeople has reasonable skill, knowledge and experience in that field. These terms and conditions (the “Terms and Conditions”) shall apply to the provision of products by ClearPeople to its customers.

1 Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement” means these Terms and Conditions and the applicable Service Order;

“Business Day” means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England, United Kingdom;

“CPOR” or “Claiming Partner of Record”

“Commencement Date” means the date on which provision of the Services will commence, as defined in the Service Order;

“Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Service Order (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

“Customer” means the party procuring the Services from ClearPeople who shall be identified in the Service Order;

“Data Protection Legislation” the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy;

“Fees” means any and all sums due under the Service Order from the Customer to ClearPeople, as specified in the Service Order;

“GDPR” General Data Protection Regulation ((EU) 2016/679);

“Partner of Record” means the association of ClearPeople to the Customer as the designated partner for any Microsoft Azure and Microsoft 365 (aka Microsoft Office 365) services or subscriptions whether provisioned by the Customer, by ClearPeople or by third party;

“Service Order” means a service order or other written agreement, in hardcopy or via electronic media, to commence Services, entered into by ClearPeople and the Customer incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;

“Services” means the services to be provided by ClearPeople to the Customer and its affiliates in accordance with Clause 2 of the Agreement, as fully defined in the Service Order, and subject to the Terms and Conditions;

“Software” means such third party software as specified within a Service Order for which ClearPeople or Customer indicate is required to support provision of the Services and for which either ClearPeople or Customer is responsible for ensuring is suitable to support the delivery of the Services;

“Term” means the term of the Service Order as defined therein; and

“UK Data Protection Legislation” any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

1.2 Unless the context otherwise requires, each reference in the Terms and Conditions to:

1.2.1 writing and any cognate expression, includes a reference to any communication effected by electronic or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 a Clause or paragraph is a reference to a Clause of the Terms and Conditions or to a Clause of the Service Order, as appropriate; and

1.2.4 a "Party" or the "Parties" refer to the parties to the Service Order.

1.3 The headings used in the Terms and Conditions are for convenience only and shall have no effect upon the interpretation of the Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2 Provision of the Services

2.1 With effect from the Commencement Date, ClearPeople shall, throughout the Term of the Agreement, provide the Services to the Customer.

2.2 ClearPeople shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the IT sector in the United Kingdom.

2.3 ClearPeople shall act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the specification of Services provided in the Service Order.

2.4 ClearPeople shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

2.5 The Parties shall co-operate in the drafting and agreement of the scope and key requirements (including key milestones and deliverables) of each Service Order. It is acknowledged that during delivery of the Services such Service Order requirements may be identified as unsuitable or requiring change. The Parties shall agree the number of changes to the Services which may be implemented without additional charge to the Customer. Either Party may notify the other of any change required to a Service Order ("Change Request") and the Parties shall in good faith discuss the reasonable adjustments required to the Service Order without impact upon the Fees agreed. ClearPeople shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Customer. Where ClearPeople believes such Change Request may require an alteration to the Fees they shall promptly notify the Customer of the same and such reasonable changes to the Fees that may be due as a result of such changes so that the Customer may determine if they wish to proceed with the Change Request.

2.6 The Parties agree that the Customer shall be entitled to benchmark the provision of the Services and the scope and frequency of such benchmarking shall be agreed within the Service Order. In default of any alternative agreement the Customer shall be entitled to undertake applicable benchmarking on no more than an annual basis.

3 Customer's Obligations

3.1 The Customer shall use all reasonable endeavours to provide all pertinent information to ClearPeople that is necessary for ClearPeople's provision of the Services.

3.2 The Customer may, from time to time, issue reasonable instructions to ClearPeople in relation to ClearPeople's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.

3.3 In the event that ClearPeople requires the decision, approval, consent or any other communication from the Customer in order to continue with the provision of the Services or any part thereof at any time, the Customer shall provide the same in a reasonable and timely manner.

3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).

3.5 If the nature of the Services requires that ClearPeople has access to the Customer's home or any other location, access to which is lawfully controlled by the Customer, the Customer shall ensure that ClearPeople has access to the same at the times to be agreed between ClearPeople and the Customer as required.

3.6 Any delay in the provision of the Services resulting from the Customer's failure or delay in complying with any of the provisions of Clause 3 of the Terms and Conditions shall not be the responsibility or fault of ClearPeople.

3.7 The Customer shall agree to assign ClearPeople as Partner of Record.

4 Fees, Payment and Records

4.1 The Customer shall pay the Fees to ClearPeople in accordance with the provisions of the Service Order and this clause 4.

4.2 ClearPeople shall invoice the Customer for Fees due in accordance with the provisions of the Service Order.

4.3 ClearPeople shall be entitled to invoice the Customer for reasonable expenses related to provided Services, in accordance with the Customer's expenses policy (to be provided upon request) and such expenses to be agreed in writing with the Customer prior to being incurred.

4.4 All undisputed payments required to be made pursuant to the Service Order by either Party shall be made within 30 days of receipt by that Party of the relevant invoice.

4.5 All payments required to be made pursuant to the Service Order by either Party shall be made in GBP in cleared funds to such bank in United Kingdom as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

4.6 Where any payment pursuant to the Service Order is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

4.7 Without prejudice to Clause 10.2.1 of the Terms and Conditions, any sums which remain unpaid following the expiry of the period set out in Clause 4.4 of the Terms and Conditions shall incur interest on a daily basis at 2% above the base rate of Barclays Bank from time to time until payment is made in full of any such outstanding sums.

4.8 Each Party shall keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Service Order to be accurately calculated.

5 Liability, Indemnity and Insurance

5.1 ClearPeople shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.

5.2 In the event that ClearPeople fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Customer.

5.3 Except for breach of clauses 7, 8 and 12, ClearPeople's total liability for any loss or damage caused as a result of its negligence or breach of the Service Order and/or the Terms and Conditions shall be limited to £5 (five) million.

5.4 Under no circumstances shall ClearPeople have any liability for loss of profit, loss of revenue, loss of goodwill, loss of business or any indirect or consequential losses under or in relation to the Agreement howsoever such liability may arise.

5.5 ClearPeople's total liability for any loss or damage under this Agreement shall not exceed the Fees paid in the 12 months prior to the date on which the loss arose.

5.6 ClearPeople shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by ClearPeople.

5.7 Nothing in the Terms and Conditions nor in the Service Order shall limit or exclude ClearPeople's liability for death or personal injury.

5.8 Subject to the liability caps specified in the Agreement, each Party shall indemnify the other against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by that Party) caused by the other Party or its agents or employees.

5.9 Neither Party shall be liable to the other or be deemed to be in breach of the Service Order and/or the Terms and Conditions by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6 Warranty

6.1 ClearPeople warrants that:

6.1.1 it has the right to enter into the Service Order;

6.1.2 it will provide the Services with reasonable skill and care;

6.1.3 the responses it has provided to the Customer's due diligence are accurate and will remain valid. ClearPeople will promptly notify the Customer if any of its responses become incorrect;

6.1.4 it has and will maintain all certifications and accreditations during the Term of this Agreement and shall promptly provide to the Customer confirmation of the same on a no less than annual basis; and

6.1.5 the deliverables specified within the Service Order will on the completion of Services conform in all material respects with any agreed standards and/or agreed specifications.

6.1.6 For clarity, this excludes any warranty implied by statute and any warranty for third party software, tools, methods or documentation.

6.1.7 ClearPeople confirms it will promptly cooperate with all reasonable and proportionate requests for information and assistance as the Customer may require to confirm the warranties provided under this Clause 6 remain accurate.

7 Confidentiality

7.1 Each Party undertakes that, except as provided by Clause 7.2 of the Agreement or as authorised in writing by the other Party, it shall, at all times during the continuance of the Service Order and for 12 months after its termination:

7.1.1 keep confidential all Confidential Information;

7.1.2 not disclose any Confidential Information to any other party;

7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Service Order;

7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of Clauses 7.1.1 to 7.1.4 of the Agreement.

7.2 Either Party may:

7.2.1 disclose any Confidential Information to:

7.2.1.1 any sub-contractor or supplier of that Party;

7.2.1.2 any governmental or other authority or regulatory body; or

7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

7.2.1.4 to such extent only as is necessary for the purposes contemplated by the Service Order (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7 of the Terms and Conditions, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Service Order, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.

7.3 The provisions of this Clause 7 of the Terms and Conditions shall continue in force in accordance with their terms, notwithstanding the termination of the Service Order for any reason.

8 Intellectual Property Rights (IPR)

8.1 Unless otherwise agreed in a Service Order, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by ClearPeople.

8.2 ClearPeople grants to the Customer a worldwide, royalty free, non-transferable, non-exclusive licence to use the IPR arising out of or in connection with the Services for the duration of the Term. The licence granted under this clause 8.2 shall take effect on the date that the relevant IPR is first used by or on behalf of ClearPeople to provide the Services or is made available to the Customer in connection with the Services.

8.3 The Customer grants to ClearPeople and, to the extent necessary, to ClearPeople personnel, or shall procure the grant of, a worldwide, royalty free, non-exclusive, non-transferable licence to use any Customer IPR to the extent necessary and for the purpose of providing the Services.

8.4 All ClearPeople materials are the exclusive property of ClearPeople.

8.5 The Customer shall use any third party software comprised within the Services strictly in accordance with the applicable licence terms for the same and where notified by ClearPeople shall be solely responsible for procuring directly its own licences for such third party software directly from the applicable software proprietor.

9 Force Majeure

9.1 No Party to the Service Order shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

10 Term and Termination

10.1 The Service Order shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of this Clause 10 of the Terms and Conditions.

10.2 Either Party may immediately terminate the Service Order by giving written notice to the other Party if:

10.2.1 any undisputed sum owing to that Party by the other Party under any of the provisions of the Service Order is not paid within 30 Business Days of the due date for payment;

10.2.2 the other Party commits any other material breach of any of the provisions of the Service Order and, if the material breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the material breach and requiring it to be remedied;

10.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

10.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

10.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Service Order);

10.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

10.2.7 the other Party ceases, or threatens to cease, to carry on business; or

10.2.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 10, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

10.3 The Customer may immediately terminate the Service Order by giving written notice to ClearPeople if ClearPeople is in breach of the UN Global Compact.

10.4 For the purposes of Clause 10.2.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

10.5 The rights to terminate the Service Order shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

11 Effects of Termination

Upon the termination of the Service Order for any reason:

11.1 any sum owing by either Party to the other under any of the provisions of the Service Order shall become immediately due and payable;

11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Service Order shall remain in full force and effect;

11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Service Order which existed at or before the date of termination;

11.4 subject as provided in Clause 11 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

11.5 each Party shall (except to the extent referred to in Clause 7 of the Terms and Conditions) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

12 Data Protection

12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

12.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and ClearPeople is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

12.3 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to ClearPeople for the duration and purposes of this Service Order.

12.4 Without prejudice to the generality of clause 12.1, ClearPeople shall, in relation to any personal data processed in connection with the performance by ClearPeople of its obligations under the Service Order:

12.4.1 process that personal data only on the written instructions of the Customer unless ClearPeople is required by applicable law to otherwise process that personal data;

12.4.2 ensure that it has in place appropriate technical and organisational measures, 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;

12.4.3 not transfer any personal data outside of the United Kingdom or European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

12.4.3.1 the Customer or ClearPeople has provided appropriate safeguards in relation to the transfer;

12.4.3.2 the data subject has enforceable rights and effective legal remedies;

12.4.3.3 ClearPeople complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

12.4.3.4 ClearPeople complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

12.4.4 assist the Customer, at the Customer's cost, in responding to any request from a data subject and 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;

12.4.5 notify the Customer without undue delay on becoming aware of a personal data breach; and

12.4.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Service Order unless required by applicable law to store the Personal Data.

13 No Waiver

13.1 No failure or delay by either Party in exercising any of its rights under the Service Order shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Service Order shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

14 Further Assurance

14.1 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Service Order into full force and effect.

15 Costs

15.1 Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Service Order.

16 Set-Off

16.1 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Service Order or any other agreement at any time.

17 Assignment and Sub-Contracting

17.1 ClearPeople shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member, sub-contractor or Software for which ClearPeople is responsible shall, for the purposes of the Service Order, be deemed to be an act or omission of ClearPeople.

18 Time

18.1 The times and dates referred to in the Service Order shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.

19 Relationship of the Parties

19.1 Nothing in the Service Order shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Service Order.

20 Non-Solicitation

20.1 Neither Party shall, for the Term of the Service Order and for a defined 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Service Order without the express written consent of that Party.

21 Customer Attribution

21.1 ClearPeople shall be entitled to refer to the Customer in promotional and other materials (including case studies) as a customer of ClearPeople and to make reference to the software products that it provides to the Customer.

22 Third Party Rights

22.1 No part of the Service Order shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Service Order.

23 Notices

23.1 All notices under the Service Order shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

23.2 Notices shall be deemed to have been duly given:

23.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

23.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

23.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

23.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

23.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

24 Entire Agreement

24.1 The Service Order contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

24.2 Each Party shall acknowledge that, in entering into the Service Order, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

25 Counterparts

25.1 The Service Order may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

26 Severance

26.1 In the event that one or more of the provisions of the Service Order is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Service Order. The remainder of the Service Order shall be valid and enforceable.

27 Dispute Resolution

27.1 Each Party shall promptly notify the other of any dispute and attempt to resolve any dispute arising out of or relating to the Service Order through negotiations between their appointed representatives who have the authority to settle such disputes.

27.2 If negotiations under Clause 27.1 of the Terms and Conditions do not resolve the matter within 90 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

27.3 If the ADR procedure under Clause 27.2 of the Agreement does not resolve the matter within 90 days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.

27.4 The seat of the arbitration under Clause 27.3 of the Terms and Conditions shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

27.5 Nothing in Clause 27 of the Terms and Conditions shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.

27.6 The decision and outcome of the final method of dispute resolution under Clause 26 of the Terms and Conditions shall be final and binding on both Parties.

28 Law and Jurisdiction

28.1 The Service Order (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

28.2 Subject to the provisions of Clause 27 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Service Order (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.