

Terms and Conditions for The Supply of Services

The Customer's Attention is Drawn Particularly to The Provisions of Clause 9 (Limitation of Liability)

The General Conditions

The parties agree:

1 Interpretation

1.1 Definitions:

Affiliate: with respect to a party, any person that, directly or indirectly, through one or more intermediaries, controls is controlled by or is under common control with such party. For the purposes of this definition, “**control**” and, with correlative meanings, the terms “**controlled by**” and “**under common control with**” means (a) the possession, directly or indirectly, of the power to direct the management or policies of a business entity, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise; or (b) the ownership, directly or indirectly, of more than fifty per cent (50%) of the voting securities or other ownership interest of a business entity (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity)

Background IP: any and all Intellectual Property Rights already owned by either party prior to the Services Start Date or generated or acquired at any time independently of the Services, including the assets listed in the Proposal

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

Charges: the charges payable by the Customer for the supply of the Services by RPC, as set out in the Proposal

Contract: the contract between the Customer and RPC for the supply of the Services in accordance with the Proposal, these General Conditions and any applicable Schedules

Control: has the meaning given in Section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly

Customer: as defined in the Proposal

Customer Materials: all materials, equipment and tools, drawings, specifications, and data supplied by the Customer to RPC

Deliverables: the documents, products and materials developed by RPC or its agents, subcontractors, and personnel as part of or in relation to the Services set out against the relevant Service in the Proposal¹

General Conditions: these terms and conditions set out in Clause 1 (Interpretation) to Clause 11 (General) (Inclusive)

Foreground IP: any and all Intellectual Property Rights in any Deliverables that arise or are obtained or developed by RPC in respect of the Services in the course of or in connection with the Contract

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

Proposal: the final agreed proposal provided by RPC and accepted by the Customer.
RPC: means the member of the Russell Partnership Collection which is supplying the Services, as set out in the Proposal

Services: the services and any Deliverables, to be provided by RPC pursuant to the Contract, as described in the Proposal

Services Start Date: the day on which the Services start, as set out in the Proposal

Third Party Materials means the materials used in the provision of the Services to which third party licence terms apply

¹ Note that IP in anything listed as a Deliverable will be assigned.

1.2 **Interpretation:**

- 1.2.1 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms
- 1.2.3 A reference to **writing** or **written** includes email but not fax

2 Commencement and Term

- 2.1 The Contract shall commence on the Services Start Date and, subject to Clause 10, shall continue until either party gives to the other not less than three months' written notice to terminate, expiring on or after the first anniversary of the Services Start Date²
- 2.2 The Contract applies to the Services whether undertaken prior to, on or after the Services Start Date

3 Supply of Services

- 3.1 RPC shall perform the Services from the Services Start Date substantially in accordance with the Service descriptions set out in the Contract and the Proposal (except in trivial and / or immaterial respects that do not adversely affect its functionality or use)
- 3.2 In supplying the Services, RPC shall:
- 3.2.1 perform the Services with reasonable care and skill
- 3.2.2 use reasonable endeavours to perform the Services in accordance with the service description set out in the Proposal
- 3.2.3 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality

² This provides for a minimum term of one year and right to terminate by either party on three months' notice.

- 3.2.4 comply with all applicable laws, statutes, regulations from time to time in force
- 3.2.5 take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that RPC may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Contract
- 3.3 RPC shall have no liability for delay or losses incurred under and/or in connection with the Contract to the extent any such liability is caused by:
 - 3.3.1 use of any Deliverables contrary to RPC's instructions, minimum requirements or modification or alteration of any Deliverables by any person other than RPC or RPC's duly authorised contractors or agents
 - 3.3.2 any act or omission of the Customer in breach of the Contract
 - 3.3.3 the unavailability or delay or changes of Third Party Materials or any incorrect, inaccurate or faulty Third Party Materials
 - 3.3.4 any acts, omissions or delays caused by a third party relating to the provision of the Services
- 3.4 RPC does not warrant, represent or undertake that the information obtained by the Customer through the Services will meet the Customer's requirements
- 3.5 RPC shall have no liability for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities
- 3.6 Time shall not be of the essence in relation to the Services

4 Customer's Obligations

- 4.1 In this Clause 4 and where used elsewhere in the Contract: "Customer Data" means all data inputted by the Customer, or RPC on the Customer's behalf for the purpose of receiving the Services or facilitating the Customer's use of the Services

- 4.2 The Customer shall:
- 4.2.1 co-operate with RPC in all matters relating to the Services
 - 4.2.2 provide, for RPC, its agents, subcontractors, consultants, and employees, in a timely manner and at no charge, access to the Customer's premises, facilities and data as reasonably required by RPC
 - 4.2.3 be fully responsible for all acts and omissions of the Customer's agents, subcontractors, consultants, and employees
 - 4.2.4 provide to RPC, in a timely manner, such documents, information, items and materials in any form (whether owned by the Customer or a third party) as RPC may reasonably require, and ensure that it is accurate and complete in all material respects
 - 4.2.5 inform RPC of all health and safety and security requirements that apply at any of the Customer's premises
 - 4.2.6 obtain and maintain all necessary licences, consents, and permissions necessary for RPC, its contractors, and agents to perform their obligations under the Contract, including without limitation the Services
 - 4.2.7 ensure that its network and systems comply with the relevant specifications provided by RPC from time to time
 - 4.2.8 use the latest end-point security and versions of anti-virus definitions and software available from an industry accepted anti-virus software provider in respect of its computer systems, technology, and network infrastructure
 - 4.2.9 be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining, and securing its network connections and telecommunications links from its systems to RPC'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
 - 4.2.10 comply with all applicable laws, statutes, regulations, and binding codes of practice from time to time in force

- 4.3 If RPC's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants, or employees, then, without prejudice to any other right or remedy it may have, RPC shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer
- 4.4 The Customer shall not submit any Customer Data or any material to RPC which contains any virus or vulnerability (including without limitation worms, Trojan horses, viruses and other similar things or devices) is unlawful, harmful, threatening, defamatory, obscene, infringing, discriminatory, harassing, or offensive (including without limitation racially or ethnically offensive), illegal or causes damage or injury to any person or property
- 4.5 If RPC's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, or third parties, RPC shall:
- 4.5.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay
- 4.5.2 be entitled to payment of the Charges despite any such prevention or delay
- 4.6 The Customer shall own all right, title, and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data

5 Non-Solicitation

- 5.1 The Customer shall not, without the prior written consent of RPC, at any time from the date of the Contract to the expiry of six months after the termination of the Contract, solicit or entice away from RPC or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant, or subcontractor of RPC in the provision of the Services
- 5.2 Any consent given by RPC in accordance with Clause 5.1 shall be subject to the Customer paying to RPC a sum equivalent to 20% of the then current annual remuneration of RPC's employee, consultant, or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor

6 Data Protection

The parties shall comply with all applicable data protection laws and enter into all required agreements required by those data protection laws

7 Intellectual Property³

- 7.1 All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its rights to use the Background Intellectual Property has derived). No licence is granted in relation to either party's Background IP unless specifically agreed in writing
- 7.2 The Customer grants RPC, or shall take reasonable steps to procure the direct grant to RPC, of a royalty-free, fully-paid, non-exclusive and transferable worldwide licence to use, copy and modify the Customer Materials and any Customer Background IP for the term of the Contract for the purpose of RPC providing the Services to the Customer in accordance with the Contract
- 7.3 Subject always to satisfactory payment in full of the Charges, RPC grants to the Customer a royalty-free, fully-paid, non-exclusive and transferable worldwide licence to use any RPC Background IP to the extent necessary to use the Foreground IP or to the extent that such Background IP would interfere with the use or enjoyment of any Deliverables delivered under the Contract
- 7.4 Subject always to satisfactory payment in full of the Charges, RPC hereby irrevocably, unconditionally, and absolutely assigned to the Customer, with full title guarantee and without restriction, all right, title and interest in and to all Foreground IP whether created, developed or produced before, on or after the commencement of the Contract. Subject to payment in full of all Charges, the assignment under this Clause 7.4 shall take effect from the date on which the relevant Foreground IP was or is created, developed, or produced
- 7.5 To the extent that this Clause 7 is not effective to assign legal title to the Foreground IP, then RPC shall execute any assignment documents reasonably requested by the Customer

³ This clause applies where the IP rights in any deliverables (Foreground IP) is to be assigned to the Customer. RPC also grants a licence in any Background IP to the extent required for the Customer to use the Deliverables. If RPC is to retain the rights in the deliverables, an alternative clause should be inserted in the special conditions or the amended terms on the front page.

- 7.6 The Customer shall indemnify RPC in full against any sums awarded by a court against RPC arising out of or in connection with any claim brought against RPC for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials or Customer Background IP by RPC

8 Charges and Payment

- 8.1 In consideration for the provision of the Services, the Customer shall pay RPC the Charges in accordance with the Proposal
- 8.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to RPC at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice
- 8.3 RPC shall submit invoices for the Charges plus VAT if applicable to the Customer [at the end of each calendar month]. Each invoice shall include all reasonable supporting information required by the Customer
- 8.4 RPC reserves the right to review and increase its prices upon notification to the Customer with effect from each anniversary of the Services Start Date
- 8.5 The Customer shall pay each invoice due and submitted to it by RPC by direct debit or such other means as RPC may require within 30 days of receipt to a bank account nominated in writing by RPC
- 8.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to make any payment due to RPC under the Contract by the due date for payment, then, without limiting RPC's remedies under Clause 10 (Termination):
- 8.6.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%
- 8.6.2 RPC may amend the payment terms to require payment in advance of all or part of the Charges, whether in relation to third party costs or otherwise
- 8.6.3 RPC may impose a credit limit on the Customer

8.6.4 RPC may suspend all Services until payment has been made in full

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

9 Limitation of Liability⁴

9.1 Except as expressly and specifically provided in the Contract:

9.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Deliverables by the Customer, and for conclusions drawn from such use. RPC shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to RPC by the Customer in connection with the Services, or any actions taken by RPC at the Customer's direction

9.1.2 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 the Contract

9.1.3 the Services and the Deliverables are provided to the Customer on an "as is" basis

9.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for⁵:

9.2.1 death or personal injury caused by negligence

9.2.2 fraud or fraudulent misrepresentation

9.3 Subject to Clause 9.1 and Clause 9.2:

⁴ Limitation of liability clauses are often heavily negotiated. The purpose is to limit RPC's liability under this contract to a specified limit or certain types of claim. This clause is of more importance to RPC as the Customer's liability under this contract is likely to be low.

⁵ These types of claims cannot be limited by law. Setting them out provides reassurance to the Customer that these are not limited or excluded.

- 9.3.1 RPC 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, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract
- 9.3.2 RPC's total aggregate liability in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 50% of the Charges paid in respect of the Service to which the claim relates under the Contract during the 12 months immediately preceding the date on which the claim arose⁶
- 9.4 Unless the Customer notifies RPC that it intends to make a claim in respect of an event within the notice period, RPC shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail
- 9.5 The Customer shall indemnify RPC against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by RPC arising out of in connection with:
- 9.5.1 any breach of Clause 4 (Customer Obligations)
- 9.5.2 claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or the Deliverables

10 Termination

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

⁶ This clause is often heavily negotiated and is usually a commercial decision for the parties. The percentage can be varied but RPC should measure this against the risk under the agreement.

- 10.1.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so
- 10.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction
- 10.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business
- 10.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy
- 10.2 Without affecting any other right or remedy available to it, RPC may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment
- 10.3 On termination of the Contract for whatever reason:
 - 10.3.1 the Customer shall immediately pay to RPC all of RPC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, RPC may submit an invoice, which shall be payable immediately on receipt
 - 10.3.2 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect
 - 10.3.3 termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry

11 General

11.1 Force Majeure

RPC shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of RPC or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, epidemic, pandemic, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers, sub-contractors or third parties, provided that the Customer is notified of such an event and its expected duration

11.2 Assignment and Other Dealings

11.2.1 RPC may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement

11.2.2 RPC may subcontract or delegate all or part of any of the Services to any of its Affiliates at any time ⁷

11.2.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement, without the prior written consent of RPC

11.3 Confidentiality

11.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of three years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of its Affiliates to which the other party belongs, except as permitted by Clause 11.3.2

11.3.2 Each party may disclose the other party's confidential information:

⁷ This provision allows RPC to subcontract services to RPT or other affiliates. If RPT is providing services which are not included in this agreement (e.g. RPC Technology) ensure this is included in the schedules.

- 11.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11.3
- 11.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority
- 11.3.3 Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract, provided that, subject to the Customer's prior approval, RPC may use the Customer's name, logo and details relating to the performance of the Contract on RPC's website and other promotional material for marketing purposes
- 11.4 **Entire Agreement**
- 11.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter
- 11.4.2 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract
- 11.4.3 Subject to any variation under Clause 11.5, these clauses apply to this Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing
- 11.5 **Variation**
- No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives)
- 11.6 **Waiver**
- 11.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy

11.6.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy

11.7 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause 11.7 shall not affect the validity and enforceability of the rest of the Contract

11.8 **Notices**

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

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

11.8.1.2 sent by email to the address specified in the Proposal

11.8.2 Any notice shall be deemed to have been received

11.8.2.1 if delivered by hand, at the time the notice is left at the proper address

11.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting

11.8.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 11.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt

11.8.3 This Clause 11.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution

11.9 Third Party Rights

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract

11.10 Governing Law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales

11.11 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation