

(1.06.2014)

1. Interpretation

In these Terms and Conditions unless the context otherwise requires

1.1 The following words and expressions shall have the following meanings:

"Conditions" - these Terms and Conditions

"Company" - Viccari Wheele Limited

"Company's Website" - www.refernet.co.uk or such other substituted website from time to time designated by the Company and notified to the Client

"Client" - the party with whom the Company has contracted to supply the Service

"Contract" - the agreement between the Company and the Client for the supply of the Service which shall be deemed to incorporate these Conditions except as specifically varied by the said agreement

"Contract Date" - the date specified as such in the Contract but otherwise the date on which the Contract is concluded

"Catchment Area" - the area specified in the Contract as such provided that where an Agency is providing services to persons residing on the margins of the area specified the Catchment Area will also include such margins

"Refernet Service" - the Company's online hosted referral service as described in the Company's Website on the date of the Contract of which the "Standard Service" will comprise the features and facilities so described in the Company's Website and "Advanced Features" will mean the features and facilities so described in the Company's Website

"Service" - the Service to be provided to the Client under the Contract and (where the context admits) any Additional Services (defined below)

"Additional Services" - any services or facilities not incorporated in the Service which are requested by the Client or agreed by the Company and the Client or any additional work carried out by the Company as a result of the breach or non observance of the Contract by the Client

"Customer" - a person requiring advisory services and information

"Referrer" - a person or body specified in the Contract providing sources of advisory services and information to Customers

"Service Agency" - a person or body specified in the Contract providing advisory services and information

"Agency" - a Referrer and/or a Service Agency

"Upgrade" - any new version of the Standard Service or any Advanced Features included in the Contract resulting from the Company's ongoing general research and development programme being marketed generally on a commercial basis by the Company but not (for the avoidance of doubt) any bespoke variations or improvements supplied by agreement to specific clients

"Target Date" - the date specified as such in the Contract but otherwise 15 weeks from the Contract Date

"Ready for use" - as specified in Condition 2.1

"Fully operational" - as specified in Condition 4.2

"Start Date" - the date on which the Service is fully operational

"Year" - any consecutive period of twelve months commencing with the Start Date or any anniversary of same

"Term" - the period for the supply of the Service specified in the Contract but if none is specified then an initial period of five years from the Start Date which will then continue during each Year following unless and until ended by either the Company or the Client giving the other at least twelve weeks written notice before the beginning of such following Year

"User Guide" - any User Guide applicable to the Refernet Service from time to time in force and available on the Company's Website

"User Instructions" - the User Guide as supplemented or varied by any instructions relating to the Service from time to time issued by the Company

"Service Data" - any data information or documents supplied by the Client or an Agency or a Customer in relation to the use of the Service

"LOGIN" - a user name and password (and any replacements) required to access the Service generated by the Service and communicated to an Agency

"Service Website" - the website to be set up by the Company to enable the Client to use the Service

"List Prices" - the Company's standard prices for the Refernet Service from time to time in force and displayed on the Company's Website from time to time

"Business Day" - any day except Saturday or Sunday or a statutory or public holiday in England

"Business Hours" - between 9.00am and 5.00pm on Business Days

"Intellectual Property Rights" - any rights conferred anywhere in the world in respect of patents, copyright, designs, trade marks or names, database rights and all other rights which may subsist anywhere in the world in respect of confidential information and inventions including rights to apply for any of the foregoing

1.2 Words denoting the singular shall include the plural and vice versa; words denoting any gender shall include any other; "person" or "party" means and includes any person or legal entity corporate or incorporate

2. Target Date

2.1 The Company shall endeavour to have the Service ready for use by the Target Date. Ready for use means that the Service Website has been :

(a) set up and is functioning so that it is capable of supplying the Service

(b) customised with the Client's logos and colours selected by the Client

(c) set up so that the Service is capable of being used by way of trial by not less than 5 Referrers nominated by the Client to access not less than 10 Service Agencies nominated by the Client

(d) tested by the Company as to its functionality

3. Training/Help

3.1 The Company will provide the Client:

(a) between the Contract Date and the Target Date with such training for the Client's suitably qualified personnel who will be concerned with the operation of the Service as may be reasonably required to enable the Client to use the Service

(b) a User Guide with sufficient instructions to enable the Client's suitably qualified personnel to use the Service

(c) reasonable online support for technical problems and telephone hotline for reasonable use by the Client to resolve Faults (as defined in Condition 3.5) during Business Hours

4. Start Date

4.1 The Client shall as soon as reasonably practicable and in any event within four weeks from the Target Date load on to the Service Website particulars of the Referrers and Service Agencies it requires in relation to its initial use of the Service .

4.2 The Service will be deemed fully operational when the exercise specified in Condition 4.12 has or should have been completed and the Service Website is functioning properly as regards Referrers and Service Agencies which have been correctly loaded on the Client Website

5. The Service

5.1 The Company shall provide the Service using reasonable care and skill

5.2 Subject to the Conditions the Service will be available to the Client at all times

5.3 The Company shall provide the Client with Upgrades without charge as soon as reasonably practicable

5.4 The Company shall host the Service Website on a secure server (with appropriate "back up" facilities) with 2048-bit key using SHA-1 with RSA encryption, this is in line with new guidelines issued on 1 January 2014 which stated that all SSL will need to be of this length until 2030. Regarding data held within the Database, passwords are stored as their hash values. A salt is concatenated to the password and the resulting value is then hashed using the SHA-1 Algorithm. Applies to all sensitive documents comprised in Service Data relating to referrals

5.5 In the event of any defect in or malfunction of the Service ("Fault") the Company shall use reasonable endeavours to rectify the Fault within 24 Business Hours of same being reported to it by the Client and the obligations of the Company under this Condition 5.5 shall be the sole and exclusive remedy of the Client in the event of a Fault

5.6 The Company may suspend the Service to incorporate Upgrades, to carry out repairs and maintenance to its equipment, systems and services and to the Service Website ("Works") in which event the Company where practicable shall give the Client at least 24 hours notice of its intention to carry out Works

5.7 All documents stored in the Service Website database will be deleted after thirty days

6. Client's Obligations

The Client shall :

6.1 Supply the Company promptly with such information and assistance the Company may require to set up and test the Service and from time to time to supply the Service

6.2 Pay the Company the fees and expenses specified in Condition 7 for providing the Services on the dates therein specified (of which time is the essence) and (if requested by the Company) pay the Service Charge by bankers standing order

6.3 Ensure that its computer(s), software and systems and those of any Agency using the Service are at all times suitable (as the Company shall specify) to use the Service

6.4 Use the Service in conformity with the Contract

and the User Instructions and procure that Referrers and Agencies do likewise

6.5 Ensure any Referrer uses the LOGIN solely for the purpose of using the Service and does not disclose same only to any other person

6.6 Use the Service solely in relation for the provision of services and information by Agencies to Customers residing in the Catchment Area

6.7 Ensure that any data, other information or materials supplied by the Client or any Agency in relation to the use of the Service do not infringe the Intellectual Property Rights or any other rights of any other person or include defamatory or illegal material or any viruses or worms or other harmful elements

6.8 Procure the consent of any third party required for the use of Service Data in relation to the use of the Service

7. Fees and Expenses

7.1 The Client shall pay the Company:

(a) for providing the Service:

(i) the Set Up, Customising and Training Fee specified in the Contract or otherwise its List Price in force on the Contract Date which shall be paid as specified in the Contract but otherwise on the Contract Date

(ii) the Service Charge at the annual rate specified in the Contract but otherwise its List Price which shall be paid as specified in the Contract but otherwise annually in advance with effect from the Start Date

(b) for Additional Services such fees and expenses the parties may agree otherwise at the Hourly Rate plus any costs and expenses properly incurred by the Company in relation thereto which shall be paid at the times agreed by the parties or otherwise within 14 days of the Company's Invoice. "Hourly Rate" means £85 per person per hour plus VAT

7.2 All payments to be made under the Contract are exclusive of any applicable Value Added Tax (which is payable additionally at the prevailing rate) and which if not paid on the date agreed for payment ("Due Date") shall carry interest at the rate of 10 per cent per annum from the Due Date until actual payment

8. Proprietary Rights of the Parties/Confidentiality/Data Protection:

8.1 All Intellectual Property Rights in the Service including any LOGIN, the User Instructions, the content and design of the Service Website (except any business name of the Client) and the name Refernet ("Name") are and shall remain the sole and exclusive property of the Company

8.2 (For the avoidance of doubt) if the Company develops any new or improved feature or facility for the Service or any variant thereof at the request of the Client all Intellectual Property Rights in same will belong to the Company who may supply same to any other person

8.3 The Company will use reasonable endeavours in its design of the Service Website to prevent persons who are not authorised by the Client to do so gaining access to Service Data if the Service is used in conformity with the Contract and the User Instructions PROVIDED THAT the Company shall have no liability for the disclosure of Service Data as a result of any breach of obligation by the Client or any person authorized or allowed by the Client to use the Service or as a result of any unlawful activity by any person

8.4 The Client shall:

(a) keep the Company's Confidential Information secret

and confidential and not to disclose it to any other person nor use it except for the due performance of or as strictly permitted by the Contract "Confidential Information" shall mean any information which is by its nature clearly confidential or proprietary or identified by the Company as such but not information which is or subsequently becomes generally available to the public other than through a breach of contract or negligence of the Client or any person authorized to use the Service by the Client or is lawfully obtained by the Client from another person without restrictions as to its use.

(b) not use the Name or any name which may be confused with the Name for any purpose whatsoever:

(i) during the continuance of the Contract other than on the Service Website or in the Client's promotional literature referring to the fact that the Client has the benefit of the Service in each case on terms first approved in writing by the Company

(ii) at any time after the termination of the Contract (for whatever reason)

8.5 The Client agrees:

(a) that the Company shall have no liability for the correctness, accuracy or completeness of any information which may be available to any person through or as a result of the use of the Service

(b) that the Company is only providing the Client with the use of a website and related database will be operated by the Client and accordingly all Service Data will be deemed held and used by the Client who will be responsible for any use of and the security of same

(c) to use and procure the Service is used in accordance with all applicable laws and regulations

AND to indemnify the Company accordingly

9. General

9.1 The Contract may be signed in one or more parts and contains the whole agreement between the parties relating to its subject matter and supersedes all prior representations and agreements relating to same and no variation of it shall be effective unless agreed in writing by duly authorised representatives of both parties

9.2 The Client shall not assign or sub-contract any of its rights or obligations under the Contract without the prior written consent of the Company

9.3 The Company may assign the Contract sub-contract the provision of the Service or part thereof on terms that the Company will remain fully liable to the Client for any breach of the provisions of this Agreement by any sub-contractor.

9.4 Neither Company nor Client shall have any liability to the other for any delay in performing or failure to perform its obligations under this Agreement as a result of Force Majeure meaning any of the following causes or circumstances namely, failure of power or telecommunications lines or other services, failure or breakdown of plant or equipment, suspension or interference with online access, non performance of suppliers and subcontractors and any other cause or circumstance beyond the reasonable control of the party affected by same

9.5 The undertaking given by the Client in Condition 5.5 is given in substitution for all conditions, representations or warranties (whether written or oral, express or implied by statute or otherwise) expressed or implied (by law or otherwise) as to the quality, fitness for purpose of the Service or otherwise as to the nature or efficacy of the Service which are hereby excluded to the maximum extent permitted by law

9.6 The liability of the Company in contract or tort (in-

cluding negligence or breach of statutory duty) except for death or personal injury caused by the Company's negligence in any Year shall be limited to the amount of the annual Service Charge payable for such Year and the Company shall have no such liability to the Client in any event for any loss of business or profits or any special, indirect or consequential loss or damage suffered by the Client or any other party however caused

9.7 Obligations which are not expressed or intended to remain in force for a particular time shall remain in force without limit in time

10. Termination/Suspension

10.1 The Company may terminate the Contract by immediate notice if the Client fails to make any payment to the Company within 14 days of the Due Date; or commits a material breach of the Contract and (if remediable) on being given written notice of breach fails to take prompt and effective action to remedy the breach; or ceases to carry on business normally; or goes into liquidation receivership or administration or suffers an analogous process

10.2 The Company may by immediate notice suspend the supply of the Service at any time when the Client is in breach of the provisions of the Contract in which event the Service Charge will continue to be payable during any period of suspension.

10.3 The Client may terminate the Contract if a Major Fault (except such resulting from any breach of obligation by the Client) persists for more than 24 Business Hours or a Major Faults persists for more than 32 Business Hours in total in any calendar month. A Major Fault is a Fault (as defined in Condition 3.5) which renders the main function of the Service inoperative

PROVIDED that the suspension, expiry or termination of the Contract (for whatever reason) shall not affect any rights or liabilities which have accrued prior to suspension or termination nor affect any provisions which are expressed or intended to continue in force following expiry or termination

11. Notices

All notices and other communications under the Contract shall be in writing in the English language and deemed to be duly given if delivered by messenger during Business Hours or if posted by prepaid certified, recorded or registered mail to the Relevant Address of the recipient or if transmitted by email to the Relevant Email Address of the recipient. The Relevant Address and Email Address of the parties are as set out in the Contract or (for either party) such substituted details as such party shall notify to the other in writing from time to time for this purpose. Notices will be deemed given (as appropriate) if so delivered when delivered, if so posted two Business Days after posting and if so transmitted by email (transmission confirmed) at the expiry of two Business Hours from the time of transmission

12. Rights of Third Parties

Neither the Contract nor any use of the Service by any third party will confer any rights on any third party and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract

13. Law/ Jurisdiction

The Contract shall be governed by and construed in accordance with English Law and each party hereby agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or other matter arising under or by reference to the Contract