

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).

1. INTERPRETATION

1.1 Definitions:

Booking	means an order for Services made by a Customer to the Supplier by delivery of a signed Order and, where applicable, by payment of Charges.
Charges	the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and Payment).
Commencement Date	has the meaning given in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 13.5.
Contract	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
Customer	the person or firm who purchases Services from the Supplier as specified in an Order.
Customer Default	has the meaning set out in clause 4.2.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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

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or in the future in any part of the world.

Order the Customer's order for Services substantially in the same form as the Schedule annexed to this Contract and into which these Conditions are incorporated.

Services the Services to be supplied to the Customer as specified in an Order.

Supplier Elevate Group Services Limited as further described in an Order.

Supplier Materials all materials, equipment, documents and other property of the Supplier.

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3 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.

1.4 A reference to **writing** or **written** includes faxes and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the date of Booking, as is made by the Customer, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures or webpages or other online or offline marketing materials, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

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- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Order.
- 3.3 The Supplier reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- 4.1.1 ensure that the terms of the Order and any information it provides to the Supplier are complete and accurate;
 - 4.1.2 co-operate with the Supplier in all matters relating to the Services; and
 - 4.1.3 provide the Supplier with such access, information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

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- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be as described in the Order.
- 5.2 The Supplier shall invoice the Customer in accordance with the terms of the Order.
- 5.3 The Customer shall pay each invoice submitted by the Supplier in accordance with the terms of the Order.
- 5.4 Any invoice shall be paid by the Customer (a) on presentation and in any event prior to any Services being supplied in the case of invoices for introductory services and (b) within 14 days of the date of the invoice for retainer engagements, in full and cleared funds, and time for payment shall be of the essence.
- 5.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, 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 5.6

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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%.

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

5.8 Services shall be provided within a maximum of one year from the date of Booking. Where the Services have not been provided within one year from the date of Booking, no refund of Charges shall be payable.

6. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

7.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

7.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

7.1.2 fraud or fraudulent misrepresentation; or

7.1.3 any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

7.2.1 loss of profits;

7.2.2 loss of sales or business;

7.2.3 loss of agreements or contracts;

7.2.4 loss of anticipated savings;

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- 7.2.5 loss of use or corruption of software, data or information;
 - 7.2.6 loss of damage to goodwill; and
 - 7.2.7 any indirect or consequential loss.
- 7.3 Subject to clause 7.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the relevant Order.
- 7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 This clause 7 shall survive termination of the Contract.

8. CHANGE OF BOOKING

If the Customer wishes to amend a Booking, the Customer should contact the Supplier at the earliest opportunity and any changes to such Booking may be made at the sole discretion of the Supplier.

9. CANCELLATION TERMS

- 9.1 The Customer may cancel the provision of Services comprising introductory sessions in which event the following provisions shall be applicable:
- 9.1.1 where not less than 2 weeks' advance written notice of cancellation is provided to the Supplier by the Customer, the Supplier shall reimburse the Customer 100% of the Charges paid in respect of the relevant Booking;
 - 9.1.2 where not less than 1 week's advance written notice of cancellation is provided to the Supplier by the Customer, the Supplier shall reimburse the Customer 50% of the Charges paid in respect of the relevant Booking;
 - 9.1.3 where not less than 48 hours' advance written notice of cancellation is provided to the Supplier by the Customer, the Supplier shall reimburse the Customer 25% of the Charges paid in respect of the relevant Booking;
 - 9.1.4 where 48 hours' or less advance written notice of cancellation is provided to the Supplier by the Customer, the Supplier shall not be obliged to

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reimburse the Customer for any Charges paid in respect of the relevant Booking.

9.2 Where the Services comprise retainer engagements such Services may be terminated by the Customer by giving three months' prior written notice to the Supplier. The Supplier's invoices rendered to the Customer in respect of Services supplied up to and including the date of termination shall be payable in accordance with clause 5.4.

10. TERMINATION

10.1 Without affecting any other right or remedy available to it, subject to clause 10.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 3 days of the Customer being notified in writing to do so.

10.2 Without affecting any other right or remedy available to it, the Supplier 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 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract:

11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

11.1.2 the Customer shall return all of the Supplier Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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11.2 Termination or expiry of the Contract shall not affect any 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.

11.3 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.

12. DISPUTE RESOLUTION

12.1 If any dispute arises in connection with this Contract, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

12.2 No party may commence any court proceedings in relation to any dispute arising out of the Contract until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

13. GENERAL

13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

13.2 Assignment and other dealings.

13.2.1 The Supplier 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 the Contract.

13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

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13.3 Confidentiality.

13.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3.2.

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

- (a) to its employees, officers, representatives, 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, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.4 Entire agreement.

13.4.1 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.

13.4.2 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 based on any statement in the Contract.

13.4.3 Nothing in this clause 13 shall limit or exclude any liability for fraud.

13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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13.6 **Waiver.** 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 breach or default. 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.

13.7 **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 13.7 shall not affect the validity and enforceability of the rest of the Contract.

13.8 **Notices.**

13.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be 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); or sent by fax to its main fax number or, where relevant, sent by email to the address specified in the Order.

13.8.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 or at the time recorded by the delivery service; or, if sent by fax, at 9.00 am on the next Business Day after transmission.

13.8.3 This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.9 **Third party rights.**

Unless it expressly states otherwise, 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.

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- 13.10 **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.
- 13.11 **Jurisdiction.** Subject to clause 12, 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.

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