



“Immerse Works” is a trading name of “PDW Group (UK) Ltd”

Terms and Conditions of Business

These terms set out the conditions which the Client, being the company which has signed up to the service 'Immerse Works', and PDW Group (UK) Ltd, referred to hereafter as **PDW**, agree to be bound in relation to this contract.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these general conditions (**conditions**).

Agreement: the agreement relating to the Service of which these general conditions form a part.

Authorised Users: those employees and customers of the Clients and its affiliates who are authorised or requested by the Client to use the Service.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.3.

Effective Date: the date specified in the agreement.

Initial Term: has the meaning given in the agreement.

Normal Business Hours: 8.30 am to 5.30 pm local UK time, each Business Day.

Service: has the meaning given in the agreement.

Software: the online software applications provided by PDW as part of the Service.

Set up Fee: the initial set up fee to access the Service specified in the agreement.

Client Data: the data inputted by the Client, Authorised Users, or PDW on the Client's behalf for the purpose of using the Service or facilitating the Client's use of the Service.

Personal Data: means as defined in the Data Protection Act 1998.

Recipient: means, in respect of an item of Confidential Information, the party receiving that item of Confidential Information.

Fees: the subscription fees payable by the Client to PDW for the provision of the Service.

Term: has the meaning given in the agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these conditions.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.8 A reference to writing or written includes faxes and e-mail.

2. USER SUBSCRIPTIONS (WHEN APPLICABLE)

2.1 Subject to the Client paying the Set up Fee and paying for the User Subscriptions in accordance with condition 7.2, the restrictions set out in this condition 2 and the other terms and conditions of the agreement, PDW hereby grants to the Client a non-exclusive, non-transferable right to permit the Authorised Users to use the Service during the Term solely for the Client's internal business operations.

2.2 The Client shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the agreement,;
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Service in order to build a product or service which competes with the Service; or
- (c) use the Service to provide services to third parties, unless that party is an affiliate of part of a joint venture with the Client; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Service, other than as provided under this condition 2.

2.3 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Service and, in the event of any such unauthorised access or use, promptly notify PDW.

3. SERVICE

3.1 PDW shall, during the Term, make the Service available to the Client subject to the terms of the agreement.

- 3.2 PDW shall use commercially reasonable endeavours to make the Service available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during its normal maintenance windows; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that PDW has used reasonable endeavours to give the Client notice in advance.

4. CLIENT DATA

- 4.1 The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data (other than Client Data inputted by PDW).
- 4.2 In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for PDW to use reasonable commercial endeavours to restore the lost or damaged Client Data from any back-up of such Client Data maintained by PDW. PDW shall not be responsible for any loss, destruction, alteration or disclosure of Client Data if as a result of actions performed by anyone other than a PDW employee, PDW's server hosting partner(s) or a sub-contractor appointed by and under the direction of PDW.
- 4.3 If PDW collects or processes any personal data on the Client's behalf when performing its obligations under the agreement, the parties record their intention that the Client shall be the data controller and PDW shall be a data processor and in any such case:
- (a) PDW will only process Personal Data in accordance with the instructions given by or agreed to by the Client from time to time;
 - (b) PDW will not disclose the Personal Data or information extracted from the Personal Data to third parties without the prior written approval of the Client;
 - (c) PDW will not cause the Client to be in breach of any Data Protection Laws;
 - (d) PDW will not process or store the Personal Data outside the European Economic Area without the prior written approval of the Client;
 - (e) the Client shall ensure that the Client is entitled to transfer the relevant Personal Data to PDW so that PDW may lawfully use, process and transfer the Personal Data in accordance with the agreement on the Client's behalf;
 - (f) the Client shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; and
 - (g) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

5. PDW'S OBLIGATIONS

- 5.1 PDW warrants that the Service will be provided with reasonable skill and care and will correspond (in all material respects) with any description of the Service which is provided to the Client by PDW in writing.
- 5.2 The warranty at condition 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Service contrary to PDW's instructions, or modification or alteration of the Service by any party other than PDW or PDW's duly authorised contractors or agents. If the Service does not conform with the foregoing warranty, PDW will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in condition 5.1. Notwithstanding the foregoing, PDW:
- (a) does not warrant that the Client's use of the Service will be uninterrupted or error-free; or that the Service and/or the information obtained by the Client through the Service will meet the Client's requirements; and
 - (b) is not responsible 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 Client acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.3 The agreement shall not prevent PDW from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the agreement.
- 5.4 PDW will provide all reasonable assistance to the Client or third parties (where relevant and permission has been granted) to ensure compliance with the Data Protection Laws. In particular, PDW agrees to provide such assistance as may be necessary to enable the Client to:
- (a) comply with requests for subject access from data subjects;
 - (b) respond to information notices or enforcement notices served upon the Client by the Information Commissioner;
 - (c) respond to complaints from data subjects; and
 - (d) investigate any breaches or alleged breaches of the Data Protection Laws.

6. CLIENT'S OBLIGATIONS

- 6.1 The Client shall:
- (a) provide PDW with all necessary co-operation in relation to the agreement; and
 - (b) provide PDW with all necessary access to such information as may be required by PDW in order to provide the Service, including but not limited to Client Data, security access information and configuration services;
 - (c) comply with all applicable laws and regulations with respect to its activities under the agreement;
 - (d) carry out all other Client responsibilities set out in the agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, PDW may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (e) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of the agreement and shall be responsible for any Authorised User's breach of the agreement;
 - (f) be responsible for ensuring that its network and systems comply with the relevant specifications provided by PDW from time to time; and
 - (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to PDW's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet.



7. CHARGES AND PAYMENT

- 7.1 The Client shall pay the Set-up Fee on or before the Effective Date in accordance with this condition 7.
- 7.2 The Client shall pay the Subscription Fees to PDW for the User Subscriptions in accordance with this condition 7.
- 7.3 The Client shall on the Effective Date provide to PDW valid, up-to-date and complete credit or debit card details or approved purchase order information acceptable to PDW and any other relevant valid, up-to-date and complete contact and billing details and, if the Client provides:
- (a) its credit or debit card details to PDW, the Client hereby authorises PDW to bill such credit or debit card:
 - (i) on or after (at PDW's option) the Effective Date for the Set-up Fee;
 - (ii) on or after (at PDW's option) the Effective Date for the Subscription Fees payable in respect of the first month during the Term; and
 - (iii) on or after (at PDW's option) the first day of each successive quarter during the Term for the Subscription Fees payable in respect of that quarter;
 - (b) its approved purchase order information to PDW, PDW shall invoice the Client:
 - (i) on or before the Effective Date for the Set-up Fee;
 - (ii) on or after (at PDW's option) the Effective Date for the Subscription Fees payable in respect of the first month during the Term; and
 - (iii) on or after (at PDW's option) the first day of each successive month during the Term for the Subscription Fees payable in respect of that month and the Client shall pay each invoice within 30 days after the date of such invoice.
- 7.4 In consideration of the provision of the Service to the Client in accordance with this agreement, the Client shall, subject to clause 7.5, pay to PDW all properly due and payable Set-up Fees and Subscription Fees within 30 days of the date of receipt of the relevant invoice by the Client.
- 7.5 In the event that the Client reasonably considers that any invoice submitted by PDW is defective or if the Client has any queries, disputes or complaints regarding any invoice, then the Client shall, within 15 Business Days of the date of receipt of the relevant invoice, notify PDW accordingly, and the Client shall be entitled to withhold payment of such disputed amount without prejudice to any rights and remedies the Client may have. Both parties agree to work together in good faith to resolve any disputed Set-up Fees and Subscription Fees.
- 7.6 In the event of late payment by the Client of any sums properly due and payable under this agreement (and provided that the Client has been given at least 15 days' written notice to cure such late payment and subject to clause 7.5, PDW reserves the right to charge interest on the amount of the late payment from the due date to the date of receipt by PDW at the annual rate of the lower of 1.5% over the then current base rate of PDW's bankers from time to time and the maximum rate permitted by applicable law. Such interest shall accrue on a daily basis both before and after any judgment. The parties agree that the right to claim interest under this clause 7.6 is a substantial remedy for late payment and is in substitution for any statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 All amounts and fees stated or referred to in the agreement:
- (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to PDW's invoice(s) at the appropriate rate.
- 7.8 PDW shall be entitled to increase the Subscription Fees upon 90 days' prior notice to the Client provided that no increase to the Subscription Fees shall take effect until the expiry of the Initial Term and any increase is no greater than 5% of the subscription fee of the current term.

8. PROPRIETARY RIGHTS

- 8.1 The Client acknowledges and agrees that PDW and/or its licensors own all intellectual property rights in the Service. Except as expressly stated herein, the agreement does not grant the Client any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Service.
- 8.2 PDW confirms that it has all the rights in relation to the Service that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the agreement.

9. CONFIDENTIALITY

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the agreement.
- 9.3 The Client acknowledges that details of the Service constitute PDW's Confidential Information.
- 9.4 PDW acknowledges that the Client Data is the Confidential Information of the Client. The Client irrevocably agrees that PDW may use the Client Data on an anonymised basis for its own internal purposes and for general marketing intelligence purposes.
- 9.5 Clause 9.1 shall not apply to any Confidential Information to the extent that:
- (a) Disclosure is required to or by any court, tribunal or government authority with competent jurisdiction;
 - (b) It is or becomes generally and freely publicly available through no fault of the Recipient or its servants or agents; or
 - (c) It can be shown to have been independently originated by the relevant Recipient or communicated to it in circumstances otherwise than where its disclosure to that Recipient imparted a duty of confidence.
- 9.6 Neither party shall issue any press release or other public document containing or make any public statement containing information which relates to or is connected with the Agreement without the prior written approval of the other party, such approval not to be unreasonably withheld or delayed. This clause 4.4 shall not prevent any disclosure required by Law.

9.7 This clause 9 shall survive termination of the agreement, however arising.

10. INDEMNITY

10.1 The Client shall defend, indemnify and hold harmless PDW against 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 Client's use of the Service.

10.2 PDW shall defend the Client, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark or database right and shall fully and effectively indemnify the Client for any amounts awarded against the Client in judgment or settlement of such claims.

11. LIMITATION OF LIABILITY

11.1 This clause 11 sets out the entire financial liability of PDW (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:

- (a) arising under or in connection with the agreement;
- (b) in respect of any use made by the Client of the Service and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the agreement.

11.2 Except as expressly and specifically provided in the agreement:

- (a) the Client assumes sole responsibility for results obtained from the use of the Service by the Client, and for conclusions drawn from such use. PDW shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to PDW by the Client in connection with the Service, or any actions taken by PDW at the Client's direction;
- (b) 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 agreement; and
- (c) the Service is provided or made available to the Client on an "as is" basis.

11.3 Nothing in the agreement excludes the liability of PDW for death or personal injury caused by PDW's negligence or for fraud or fraudulent misrepresentation or for any other liability which cannot lawfully be excluded or limited.

11.4 Subject to clause 11.2 and clause 11.3:

- (a) PDW 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 agreement; and
- (b) PDW's total aggregate liability in contract (other than in respect of the indemnity at condition 10.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the agreement shall be limited to the total Subscription Fees paid during the 12 months immediately preceding the date on which the claim arose in addition to 50% of any set up fee and/or bespoke development to the software.

12. TERM AND TERMINATION

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the agreement without liability to the other if:

- (a) the other party commits a material breach of any of the terms of the agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party is made or is deemed to be bankrupt (in the case of the Individual), is unable to pay its or their debts as they fall due for payment, or admits inability to pay its or their debts; or
- (g) the other party ceases, or threatens to cease, to trade; or
- (h) there is a change of control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010; or
- (i) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.2 On termination of the agreement for any reason:

- (a) all licences granted under the agreement shall immediately terminate;
- (b) PDW will destroy or otherwise dispose of any of the Client Data in its possession unless PDW receives, no later than thirty (30) days after the effective date of the termination of the agreement, a written request for the delivery to the Client of the then most recent back-up of the Client Data. PDW shall use reasonable commercial endeavours to deliver the back-up to the Client within 30 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by PDW in returning Client Data; and
- (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.



13. FORCE MAJEURE

PDW shall have no liability to the Client under the agreement if it is prevented from or delayed in performing its obligations under the agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control.

14. GENERAL

- 14.1 A waiver of any right under the agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 14.2 Unless specifically provided otherwise, rights arising under the agreement are cumulative and do not exclude rights provided by law.
- 14.3 If any provision (or part of a provision) of the agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 14.4 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.5 The agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 14.6 Each of the parties acknowledges and agrees that in entering into the agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the agreement or not) relating to the subject matter of the agreement, other than as expressly set out in the agreement.
- 14.7 The Client shall not, without the prior written consent of PDW such consent not to be unreasonably withheld, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the agreement.
- 14.8 PDW may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the agreement.
- 14.9 Nothing in the agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.10 The agreement does not confer any rights on any person or party (other than the parties to the agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.11 Any notice required to be given under the agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the agreement, or such other address as may have been notified by that party for such purposes.
- 14.12 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.
- 14.13 The agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 14.14 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the agreement or its subject matter or formation (including non-contractual disputes or claims).

Should contingency plans be required then **PDW** will make suitable prior arrangements by separate contract or amendment to this.

E&OE

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