

# Standard Terms and Conditions of Contract (Professional Services)

Ver:7.1 Dated 05/18



Market-U is a trading name of soVision IT Limited.

## 1. Definitions and Interpretation

1.1 Unless the context otherwise requires, the following definitions shall apply:

**Bespoke Services** means any Designs, Bespoke Software, Maintenance Services, Project and Digital Marketing Services;

**Bespoke Software** means any Software including without limitation systems, programmes, applications and mobile applications that is specifically designed and developed or modified by soVision for use by the Customer;

**Branding Services** means creating a unique name, story, vision, mission, values, image for a product in the consumers' mind, mainly through the Customer's website and social media accounts;

**Change Control Process** means the process whereby soVision shall document, configure and control any modifications and/ or changes to Bespoke Services either requested by the Customer or required in order to provide the Services;

**Commencement Date** means the date that the Contract is effected either by the Customer's acceptance of the terms of the Order or when the Services are first delivered or made available for use by the Customer or when work commences on provision of the Services, whichever is the earlier event;

**Confidential Information** means any information, written or oral, of a confidential nature obtained under contractual arrangements for or in connection with the Services including, but not limited to, any of the components, processes or methods of operation or design in the Bespoke Services, any information regarding the existence of errors or viruses found in the Services and any unpublished information relating to either party's technology, know-how, intellectual property, commercial activities, finances or any such information relating to either party's suppliers, sub-contractors or customers, in addition to physical and data access passwords and codes received or acquired in the fulfilment of Services under the Contract. Failure to mark any Confidential Information as confidential or proprietary will not affect its status as Confidential Information under the Contract.

**Content Marketing Services** means the process of delivering any content that is incorporated or is capable of incorporation into the Customer's website or social media accounts;

**Contract** means the agreement between soVision and the Customer incorporating these terms and conditions and any other of soVision's terms referred to herein; any third party terms of supply and/ or licence conditions, as applicable; and the Order, all as may be amended from time to time pursuant to clause 1.6;

**Customer** means the business or organisation with whom soVision contracts to supply the Services. soVision may accept instructions from another person who it reasonably believes is acting with the Customer's authority or knowledge;

**Customer Materials** refers to any materials provided by the Customer and used in the provision of the Services including but not limited to web page content, other template content, software, copy, imagery, video and branding elements;

**Designs** means any design, development or prototype and associated modifications and updates provided by soVision to the Customer including without limitation any writing, designing, building and programming of websites and Bespoke Software;

**Digital Marketing Services** means services including but not limited to Content Marketing Services, Social Media Services, PPC (Pay Per Click) Services, Branding Services, SEO (Search Engine Optimisation) Services, and/or Email Marketing Services;

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**Email Marketing Services** means the creation of marketing messages based on the Customer Materials to be delivered via email and transmission of email messages on behalf of the Customer;

**Equipment** means the switches, routers, servers, computers and all other items of hardware necessary to form a connection and interface to the Services;

**Goods** means all items of physical hardware including without limitation any items of equipment, machinery, cabling and furniture, together with any purchased original equipment manufacturer software (OEM) or commercial off-the-shelf software (COTS) whether available only as a download or on any physical media. The supply of all Goods is subject to soVision's Terms and Conditions for Sale of Goods which can be found at <http://www.sovisionit.com>;

**Hosted Services** means any services made available through access over the Internet to a hosted server network including, without limitation, Hosted Exchange email, Infrastructure as a Service (IaaS) and Software as a Service (SaaS). Where Hosted Services are provided by soVision the terms and conditions contained within soVision's Acceptable Use Policy (AUP) and ISP Standard Terms and Conditions documentation (available on-line at <http://www.sovisionit.com>) shall apply to that part of the Services;

**Intellectual Property Rights** means copyright, database rights, design rights, patents, trademarks, service marks, trade names and other rights in goodwill, rights in know how, trade secrets and other confidential information and ideas and all other rights whatsoever of a like nature worldwide whether those rights are registered or not;

**Law** means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which soVision or the Customer is from time to time subject;

**Maintenance Services** means the ongoing, annually renewable services and/or licence fees required to maintain the Bespoke Services;

**Order** means any information supplied by soVision in any form that constitutes an offer capable of acceptance by the Customer and which has been accepted by the Customer either expressly or implied by confirmatory action. The Order will define the elements of Services to be provided, the charges applicable to those Services, the delivery details and any special terms that will apply;

**PPC (Pay Per Click) Management Services** means the management of online paid campaigns (e.g. Google Ads, Facebook, Twitter) on behalf of the Customer;

**Project Services** means any IT infrastructure and equipment scoping, configuration, installation and reconfiguration services and any other consultancy services provided by soVision;

**Services** means Bespoke Services and any Hosted Services to be provided by soVision in fulfilment of the Order;

**SEO (Search Engine Optimisation)** means the process of improving the visibility of a website or web page to both search engines and searchers;

**Social Media Services** means services involving the creation and maintenance of the Customer's social media accounts (e.g., Facebook, Twitter, Foursquare, etc.);

**Software** means any executable code supplied to the Customer by soVision in relation to the Services;

**soVision** means soVision IT Ltd, a private limited company registered in England No. 10714018 and whose registered office is at Avon House, Avon Mill Lane, Keynsham, Bristol BS31 2UG and its predecessor soVision Ltd, Registratlon No. 3925392 also registered at Avon House, BS31 2UG;

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**Statement of Works** means the detailed written description of requirements and schedule as applicable for any Bespoke Services to be supplied and which forms part of the Order;

**User Documentation** means any documentation relating to the use of Services and/or any Software supplied by soVision in any format or made available on-line.

- 1.2 The expressions “Customer” and “soVision” shall include their respective successors and permitted assignees and their respective employees and agents.
- 1.3 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.4 ‘In writing’ and ‘written’ means any form of recorded message capable of comprehension by ordinary visual means including hand or type written documents together with any electronic or digitised communication containing text.
- 1.5 The headings in herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of these terms and conditions.
- 1.6 soVision reserves the right to amend the terms and conditions contained or referred to herein, and any other special terms connected with provision of the Services, from time to time. soVision shall notify the Customer in writing of changes it makes to any special terms contained or defined in the Order. Changes to soVision’s standard terms and conditions will be posted on the soVision website at <http://www.sovisionit.com>.

## 2. Quotations and Formation of Contract

- 2.1 Subject and without prejudice to conditions 2.2 and 2.4 any quotation made by soVision for the provision of Services to the Customer’s order, unless otherwise stated, is open for acceptance by the Customer for a period of 30 days from the date of quotation. Thereafter, soVision reserves the right to vary or cancel any quotation without notice.
- 2.2 Where a quotation includes hardware, software or third party licensing the pricing for these items is non-binding and subject to change if Vendor prices or currency values fluctuate.
- 2.3 soVision shall endeavour to correctly scope all Services required at quotation stage. However, in some cases the interoperability of Services with existing infrastructure, facilities and systems may not be capable of validation until provision of Services has commenced and all quotations are provided on an errors and omissions excepted (E&OE) basis.
- 2.4 A general quotation or estimate is not an offer and may be withdrawn without notice and an order given in respect of a general quotation or estimate is not binding on soVision until or unless accepted by soVision.
- 2.5 Quotations, orders and contracts are made, accepted and entered into subject to soVision’s standard terms and conditions as herein described or referred to together with any special or third party terms and usage policies advised as applying to the Services, any of which may be amended from time to time in accordance with clause 1.6. These terms and conditions shall not be deemed to have been altered, modified or varied by the Customer save as expressly agreed by soVision in writing.
- 2.6 If these terms and conditions together with any special or third party terms applying to the Services differ in any respect from those of any offer made or order placed by the Customer, the Customer’s terms will not be binding on soVision until or unless expressly accepted by soVision and no acceptance by soVision of the terms of such counter offer shall be implied.

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2.7 The giving by the Customer of any instruction to proceed with provision of the Services or any part thereof, or any other conduct of the Customer in confirmation of the existence of the Contract shall constitute an unqualified acceptance by the Customer of these terms and conditions.

## 3. Cancellation of Orders

3.1 Cancellation of Orders, in whole or in part, cannot be accepted without soVision's consent in writing and any acceptance shall only be on terms that the Customer indemnifies soVision in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, re-stocking fees, and any other charges and expenses incurred by soVision as a result of cancellation.

3.2 No cancellation can be accepted for

- i) any item or service which is bespoke or has been customised in any way; or
- ii) any equipment or shrink-wrapped Software product where the product packaging or seal has been broken; or
- iii) any downloadable Goods where download has already occurred
  - a) where ii) and iii) applies whether by the Customer's action or by soVision acting on the Customer's behalf, i.e. as part of installation or set up services.

3.3 All Goods and Bespoke Services provided by soVision are deemed to be purchased by the Customer in the normal course of conducting business and as such any statutory consumer protection that would otherwise be afforded to the Customer as a consumer, including the right to cancel, shall not apply.

## 4. Provision of Services

4.1 soVision shall use all reasonable endeavours to provide the Customer with the Services in accordance with the terms and conditions of the Contract.

4.2 Whilst soVision shall make every effort to comply with any estimated or scheduled delivery date timeframes may be affected by supply chain events outside soVision's control and all times or dates given for delivery or performance of the Services are indications given in good faith. soVision shall not be liable for any delay in delivery and time of delivery shall not be the essence of any Contract save for the provisions of conditions 5.5, 5.6 and 5.7 below.

4.3 Subject to the application of clauses 12.3 and 19.2 soVision reserves the right to sub-contract all or any part of the Services at its sole discretion.

4.4 Other than where provided as part of the Services, it is the Customer's sole responsibility to ensure that it has all the necessary and appropriate software, licences, permissions, operating systems, equipment and facilities to use the Services.

4.5 No defect or default in any part delivery of the Services shall entitle the Customer to treat the Contract as repudiated for the balance of the Services remaining to be delivered under it.

## 5. Bespoke Services

5.1 The Customer shall provide all necessary Customer Materials, commentary, images, text, facilities, passwords, codes, site availability and access, equipment, personnel and any other resources required in a timely fashion to facilitate soVision's fulfilment of the Order.

5.2 As appropriate, soVision shall conduct a site survey/audit prior to delivery of Project Services. Where this identifies that additional services are required over and above those originally scoped in the Statement of Works in order to effect satisfactory performance of the Contract, soVision shall provide the Customer with a quotation for these additional services and the Customer shall be responsible for any reasonable additional charges in this event.

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- 5.3 Except as specified in the Order soVision shall not be responsible for the connection, interconnection or operability of any other of the Customer's hardware, software or infrastructure and the Customer shall be responsible for any additional charges and costs relating to any changes the Customer requires to the Statement of Works.
- 5.4 Designs shall be provided in accordance with the Statement of Works. soVision shall provide a quotation to the Customer for any additional costs and charges relating to any changes in the Statement of Works and if it is agreed to proceed with the changes the Customer shall pay all relevant additional costs and charges.
- 5.5 The Customer must, within 7 days of delivery and, if applicable, installation, test the Designs in accordance with any acceptance criteria set out in the Statement of Works. soVision shall be entitled to observe and, at its option, participate in the acceptance tests.
- 5.6 The Customer is deemed to have accepted the Designs on the earliest of the following events:
- i) the Customer has completed user acceptance tests to its reasonable satisfaction; or
  - ii) 7 days have elapsed since the Designs have been made available to the Customer for user acceptance testing and the Customer has failed either to complete the user acceptance tests or to notify soVision in writing of any defects.
- 5.7 In the event that soVision's delivery or performance of Bespoke Services is significantly delayed either directly or indirectly through the Customer's action, inaction, instruction, failure to instruct or provide facilities or access or for any other reason that could reasonably be implied as under the control of the Customer, soVision shall be entitled to render an invoice for all Services provided, and/or time expended and/or stage payment planned up to the date that delivery or performance is necessarily suspended and such invoice shall be payable by the Customer in accordance with clause 7.6.
- 5.8 Any Maintenance Services and Hosted Services applicable to the Services shall be set out in the Order and the Customer shall be responsible for timely settlement of any periodic and renewable charges invoiced by soVision including, without limitation, the cost of licences, security and compliance certification, domain registration and support contracts.
- 5.9 soVision's ISP Standard Terms and Conditions (published on-line at [www.sovisionit.com](http://www.sovisionit.com)) apply to all domain name registrations. In the event that the Customer requests soVision to register and install a Secure Certificate, soVision shall have no liability should this process fail due to any incompatibility between information held against the domain name and the Certificate of Incorporation, etc. The Customer shall remain liable for any costs incurred by soVision notwithstanding that an installation is unsuccessful.
- 5.10 The Customer shall not attempt any alteration, reverse engineering, assembly, disassembly or manipulation of any kind of the source code in the Designs, compiled or otherwise, and any attempt to do so will immediately invalidate any warranty that may otherwise apply.
- 5.11 Where images used in the Designs have been purchased by soVision on behalf of the Customer these images are strictly for use in the Designs only. The Customer will not attempt to use such images for any other purposes and soVision are not liable for misuse of these images by the Customer or any other person's copying, altering or distributing the images to individuals or other organisations.
- 5.12 All changes to the Statement of Works requested by the Customer or which result from errors or omissions or non-availability of third party supplies and any other changes agreed between the Customer and soVision shall be managed through the Change Control Process.
- 5.13 Any errors or omissions of the Customer will be the Customer's responsibility.
- 5.14 Any significant delays or material variations required to the Services will be notified in writing to the Customer

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5.15 The Services may comprise Software, services, technical information, training materials or other technical data which are subject to the United States of America Export Control Regulations or the Laws of another country. The Customer may not download or otherwise export or re-export the Software or any underlying information or technology except in full compliance with all United States' and other applicable Laws.

### 6. Licences

6.1 Where the Customer is purchasing OEM or COTS Software, the Customer is granted a non-exclusive non-transferable licence to use the Software and any User Documentation only for the number of users identified in the Order.

6.2 Subject to the payment of any relevant licensing fee, the Customer is granted a non-exclusive, non-transferrable licence to use any Intellectual Property Rights incorporated in the Designs in the course of their own business and not for re-sale. The Customer may make one copy of the Designs, solely for the purpose of their own security, backup and archival purposes.

6.3 The Customer agrees to comply with the terms of any licences of Software reasonably required by the owner of any Intellectual Property Rights in any of the Software for the protection of that Software as notified to the Customer or appearing on screen as part of the Services. On-screen acceptance of any end user licence terms, continued use of the Services, or failure to terminate the Contract will be deemed to constitute acceptance of such Software licence terms and conditions.

6.4 Where soCMS is used in the development of the Designs, the Customer is granted a non-exclusive, non-transferrable, royalty free soCMS user licence whilst the relevant website is hosted by soVision. Such licence will be chargeable in accordance with clause 7.5 if hosting is transferred to another provider.

### 7. Charges and Payment

7.1 The Customer shall pay all charges for the Services (including but not limited to any preparatory work, usage time, subscription, registration and certification fees, installation, maintenance and licensing charges).

7.2 soVision shall be entitled to charge the Customer for all and any additional costs and expenses incurred:

- i) where Services delivery or performance is delayed either directly or indirectly through the Customer's action, inaction, instruction, failure to instruct or provide facilities or access or for any other reason that could reasonably be implied as under the control of the Customer;
- ii) where the Customer instructs changes to the Services;
- iii) for travelling, delivery and other out of pocket expenses incurred in delivery of the Services.

7.3 Unless otherwise agreed in writing, a deposit of 30% is payable for all Designs on acceptance of order by soVision. soVision reserve the right to require a deposit or hardware/software prepayment for high value or protracted Project Services. Any stage payment arrangements will be identified in the Order.

7.4 soVision shall render a final invoice for Designs at the point when the Designs are made available for user acceptance testing by the Customer.

7.5 Subject to clause 6.4, or as otherwise agreed in writing, an annually renewable licence fee will be payable for the Customer's use of the Intellectual Property Rights in the Designs, at the rates set in the Order or as advised from time to time.

7.6 Unless otherwise stated, payment of all charges is due on soVision's standard terms for payment which are 14 days from the date of invoice.

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- 7.7 soVision shall submit invoice and credit notes electronically in Portable Document Format (pdf) and the Customer will be requested to provide an electronic address for such purpose.
- 7.8 Charges quoted by soVision are exclusive of VAT which shall be charged at the rate prescribed by law at the time of invoice. All payments must be made in UK Pounds Sterling.
- 7.9 Without prejudice to any other of its rights soVision may at its sole discretion exercise its statutory right to claim interest and compensation for debt recovery costs under applicable late payment legislation on any amounts that remain due more than 30 days from the date of invoice and may suspend without notice or penalty all Services it provides to the Customer until such overdue amounts are settled in full.
- 7.10 If any payment is returned by the Customer's bank as unpaid for any reason, the Customer will be liable for an additional charge for administration of £25 plus VAT.
- 7.11 If at any time the Customer fails to meet the standard of creditworthiness deemed acceptable by soVision from time to time, soVision shall be entitled to withdraw credit facilities to the Customer or terminate the Contract forthwith.
- 7.12 soVision shall be entitled to set off any amounts it owes to the Customer against any amounts owed to it by the Customer for provision of any Services.
- 7.13 The Customer shall not be entitled by reason of any claim against soVision to withhold payment of the price of the Services or to claim any right of set-off against any payment due to soVision under any Contract.

## 8. Warranty

- 8.1 soVision provides the following limited warranty with respect to Designs:
- i) that, for a period of 90 days from the date of actual or deemed acceptance by the Customer in accordance with condition 5.6 above, whichever is the earlier, any Designs will conform in all material respect to the Statement of Works;
- 8.2 Whereas soVision and its suppliers have used reasonable efforts to minimise defects or errors in the Designs and to check the Designs for viruses, soVision does not warrant that the Customer's use of the Designs will be uninterrupted or that the operation of the Designs will be error free, virus free or secure, or that the Designs are fit for a particular purpose. soVision's sole liability for any breach of the warranties in condition 8.1 shall be, at soVision's option:
- i) to receive an amended version of the Bespoke Software via, patch, reissue, update or by any other means at soVision's disposal; or
  - ii) to have the Bespoke Services or any part thereof re-performed at no additional charge.
- 8.3 Repaired, corrected or replaced Software shall be warranted for the unelapsed period remaining under the warranty that covered the original Software supplied, or if longer, for a period of thirty (30) days after the replacement, revision or work around has been made available to the Customer.
- 8.4 soVision shall not be liable for any defect in the Designs:
- i) that is not notified to soVision in writing during the warranty period at 9.9;
  - ii) that cannot be verified or reproduced by soVision; or
  - iii) if and to the extent that the defect is caused by the Customer or a third party.
- 8.5 If soVision finds that the alleged defect does not exist, soVision may make an additional charge for investigating the alleged defect.

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- 8.6 Where soVision provides Search Engine Optimisation for a Customer, soVision does not guarantee any specific placement or ranking on search engines.
- 8.7 The warranty contained in clause 8.1 are the only warranties made by soVision concerning Designs. soVision makes no other express or implied warranty relating to the performance, quality or fitness for a particular purpose of the Designs and no soVision agent or employee is authorised to make any modifications, extensions, or additions to this warranty.
- 8.8 If any modifications are made to the Software by the Customer during the warranty period; if any media containing Software is subjected to accident, abuse, or improper use; or if the Customer is in breach of the terms of the Contract then these warranties shall immediately be terminated.
- 8.9 These warranties shall not apply if any Software is used on or in conjunction with systems, hardware or programs other than those unmodified versions of the same with which the Software was designed to be used as described in any User Documentation or as detailed in any Statement of Works.
- 8.10 soVision does not warrant and excludes all liability in respect of the accuracy, completeness, fitness for purpose or legality of any information accessed using the Services and soVision excludes all liability of any kind for the transmission or the reception of or the failure to transmit or to receive any material of whatever nature.
- 8.11 Where soVision provides Digital Marketing Services for a Customer, soVision makes no guarantees of any specific results in terms of number of followers, social interactions, subscribers, email openings, website visitors, content readers or any specific placement and ranking on search engines.

### 9. Limitation of Liability

- 9.1 In performing any obligation under the Contract, soVision's duty is only to exercise the reasonable care and skill of a competent provider of such services.
- 9.2 soVision shall be liable without limitation in respect of:
- i) death or personal injury arising from its own negligence or that of its employees, agents or sub-contractors while acting in the course of their employment by soVision; or
  - ii) its own fraudulent acts or fraudulent misrepresentation; or
  - iii) any liability of soVision which cannot by Law be excluded or restricted.
- 9.3 The Customer may enter into or seek to enter into transactions with third parties in relation to the sale, rental or provision of Goods and services via the Services. soVision shall not be a party to such transactions and shall not be liable whether in contract, tort (including liability for negligence), or otherwise for any loss, cost or damage incurred by the Customer arising out of or in relation to the transaction or attempt to enter into a transaction (including but not limited to failure to transmit or distortion of any messages sent via the Services).
- 9.4 soVision provides no warranty of any kind with respect to the security and integrity of the Customer's equipment or network systems and any liability whatsoever arising from or out of:
- i) connection to the Internet or;
  - ii) any person's act of interference (whether malicious, wilful or accidental)
- is hereby expressly excluded.
- 9.5 soVision accepts no liability whatsoever whether in contract, tort (including liability for negligence), or otherwise for:
- i) the acts or omissions of providers of telecommunication and/or connectivity services or for faults in or failures of their apparatus or networks;



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- ii) loss of any business, revenue or profits, anticipated savings, wasted expenditure, goodwill or contracts;
- iii) corruption or destruction of data;
- iv) claim, action or demand made against the Customer by any third party; or
- v) any indirect or consequential loss, damage, cost, expense or claim whatsoever arising out of or in connection with the Contract.

9.6 Except as provided for in condition 9.2 above, soVision's aggregate liability (inclusive of interest and legal and other costs) to the Customer in respect of all and any claims arising under or in connection with the Contract shall not in any event exceed the amount paid by the Customer under the Contract.

### 10. Termination

10.1 The minimum contract period for Hosted Services is 12 months. Thereafter such services may be terminated in accordance with soVision's ISP Standard Terms and Conditions (available on-line at <http://www.sovisionit.com>) or such other third party conditions as may apply to provision.

10.2 Contracts for Bespoke Services may not be terminated prior to fulfilment of the Order unless on terms agreed in writing by soVision or by application of clause 10.3 or 10.4.

10.3 Either Party may terminate the Contract by notice with immediate effect if:

- i) provision of Services is prohibited at any time by a competent judicial or regulatory authority;
- ii) the other applies for dissolution or is dissolved, or begins, is party to, consents to or is otherwise subject to proceedings under the law relating to bankruptcy, distress, receivership, insolvency or the relief of creditors or enters into arrangements benefiting its creditors;
- iii) the other materially breaches the Contract (which shall include non-payment of Charges) and, if the breach is remediable, fails to remedy it within 28 days of receiving written notice of the breach ;.

10.4 soVision shall be entitled to terminate the Contract by notice with immediate effect if:

- i) The Customer fails to take delivery of the Services except in accordance with its contractual rights.
- ii) soVision suspects on reasonable grounds that the Customer may have committed or be committing any fraud against soVision; or
- iii) the Customer provides soVision with any false, inaccurate or misleading information for the purpose of obtaining the Service; or.
- iv) there is a change of Control of the Customer within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or
- v) the Customer purports to assign any of its rights or obligations under this contract.

10.5 Termination in accordance with conditions 10.3 and 10.4 above shall not prejudice any other rights or remedies of the injured party and will be without liability for any loss or damage suffered by the party in default.

10.6 In addition to its statutory rights, if the Customer is in default, soVision may suspend the Services (in whole or in part) without prejudice to its right to terminate the Contract. Where the Services are suspended under this condition, the Customer shall pay any charges for the Services until the Contract is terminated.

10.7 If valid notice is given to terminate the Contract, no refunds will be payable and the Customer shall pay all charges due up to the expiry of the notice period or expiry of the minimum contract period, if any applies. The Customer's notice does not avoid any liability for Services already provided.

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## 11. Intellectual Property Rights

- 11.1 The Customer acknowledges that, unless specifically agreed otherwise in writing, all source code and associated Intellectual Property Rights in any Software, User Documentation and/or Designs supplied to the Customer are and shall remain the property of soVision or its licensors and no right of title is implied or conferred by or in the Customer's payment of charges for or use of the Designs.
- 11.2 The Intellectual Property Rights contained in any Customer Materials supplied to soVision for use in the Designs and/or Services remain with the Customer and soVision is granted a non-exclusive, royalty-free licence to use such materials and content for the purposes of fulfilling the Contract.
- 11.3 The Customer must not, nor may it permit any other person to:
- i) copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance the Software or the Documentation;
  - ii) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Software and/or the Documentation;
  - iii) make any of the Software and/or the User Documentation available to any person other than its employees without the prior written consent of soVision; or
  - iv) do any act that would or might invalidate or be inconsistent with soVision's or its licensors' Intellectual Property rights.
- 11.4 The Customer must, at soVision's expense, take all such steps as soVision may reasonably require to assist soVision to maintain the validity and enforceability of soVision's Intellectual Property rights.

## 12. Confidentiality

- 12.1 Each party will keep and maintain any Confidential Information disclosed to it by the other or learned or acquired by it in the operation of the Contract in the strictest confidence, using the same care as it uses to safeguard its own confidential information.
- 12.2 A party's Confidential Information shall not include information which the other party can demonstrate:
- i) is previously rightfully known to it without restriction at the time of disclosure;
  - ii) is or becomes, from no act or omission on its own part, generally known in the relevant industry or public domain;
  - iii) is disclosed to it by a third party as a matter of right and without restriction at the time of disclosure; or
  - iv) is independently developed by it without access to the Confidential Information; or
  - v) is required to be disclosed by it in under any applicable Law including disclosure required for compliance with the Freedom of Information Act 2000 or The Regulation of Investigatory Powers (RIP) Act 2000;
- 12.3 Neither party may use or disclose any Confidential Information other than for the purposes and activities specifically permitted by the Contract and each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees, sub-contractors or agents in violation of these terms.
- 12.4 If the Customer is legally compelled to disclose any Confidential Information, then, prior to such disclosure, the Customer must:
- i) immediately notify soVision to allow soVision the opportunity to contest the requirement for disclosure;
  - ii) affirm the privileged and confidential nature of the Confidential Information; and
  - iii) co-operate fully with soVision in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection is not obtained the Customer may disclose the

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Confidential Information only to the extent necessary to comply with applicable legal requirements.

- 12.5 The obligations of confidentiality in this Clause 12 shall survive termination of the Contract for whatever cause.

### 13. Passing of Property

- 13.1 Legal title to and the beneficial interest in the Services, to the extent permissible under the conditions of the Contract and subject at all times to the restrictions of clause 11.1, shall not pass to the Customer until the full price due under the Order (and any other Order made prior to the date of the Order between the Customer and soVision) has been paid.
- 13.2 The Customer shall bear the risk of any loss of, or damage to, or deterioration of the Goods from whatever cause arising after the date of delivery.

### 14. Indemnity

- 14.1 The Customer shall indemnify and hold harmless soVision against each loss, liability or cost incurred by soVision arising out of:
- i) any claims or legal proceedings which are brought or threatened against soVision for infringement of Intellectual Property Rights in any Customer Materials and/or other material, media or content supplied by the Customer in respect of any Designs or Digital Marketing Services.
  - ii) any claims or legal proceedings which are brought or threatened against soVision arising from the Customer's use of the Services, including without limitation, the abuse of any acceptable use policy applying; or
  - iii) any breach of this contract by the Customer.
- 14.2 The Customer shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgements awarded against soVision arising from the above claims and shall provide soVision with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Customer's sole expense.

### 15. Assignment

- 15.1 The Customer shall not assign or delegate or otherwise deal with all or any of its rights or obligations under the Contract. soVision shall have the right to assign or otherwise delegate all or any of its rights or obligations under the Contract to any person or entity.

### 16. Force Majeure

- 16.1 soVision shall not be liable for any breach of its obligations under the Contract where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including without limitation, by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, terrorism, riot, civil commotion, malicious damage, failure of any telecommunications or computer system or other service provider, compliance with any law, accident (or by any damage caused by any of such events).
- 16.2 Neither Party will be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under this contract due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this Contract and the time for performance of the affected obligation will be extended by such period as is reasonable in any given circumstance.

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### 17. Entire Contract and no Waiver

- 17.1 These terms and conditions together with any documents expressly referred to in them, contain the entire contract between soVision and the Customer relating to the subject matter covered and supersede any previous contracts, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters.
- 17.2 No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, the Customer has not relied on any representation other than those expressly stated in these terms and conditions and agrees that it shall have no remedy in respect of any misrepresentation which has not been made expressly herein.
- 17.3 No waiver by soVision of any default of the Customer under the Contract shall operate or be construed as a waiver by soVision of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by soVision to the Customer shall in any way release, discharge or otherwise affect the liability of the Customer under the Contract.
- 17.4 If any one or more of the terms and conditions herein is found to be unenforceable or invalid, the validity of the remaining terms will not be affected.

### 18. Notices

- 18.1 Any notice to be given by either party to the other, unless as otherwise provided in these terms, may be sent by email, fax or postal service to the address of the other party as it appears in the Order or such other address as such party may from time to time have communicated to the other in writing or, if either party is a limited company, to its registered address. A notice if sent by email shall, unless the contrary is proved, be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post shall be deemed to be served two days following the date of posting.

### 19. Data Protection

- 19.1 The provisions shall apply to the processing of Personal Data, carried out for the Data Controller by the Data Processor, and to all Personal Data held by the Data Processor in relation to all such processing.
- 19.2 The Data Processor is only to carry out the Services, and only to process the Personal Data received from the Data Controller:
- a) for the purposes of those Services and not for any other purpose; and
  - b) to the extent and in such a manner as is necessary for those purposes;
- 19.3 All instructions given by the Data Controller to the Data Processor shall always be in compliance with the GDPR and other applicable laws. The Data Processor shall act only on instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).
- 19.4 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 19.5 The Data Processor shall transfer all Personal Data to the Data Controller on the Data Controller's request in the formats, at the times, and in compliance with the Data Controller's written instructions where reasonable.
- 19.6 Both Parties shall comply always with the GDPR and other applicable laws and shall not perform their obligations under this contract between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 19.7 The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.

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- 19.8 The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Statement are satisfactorily performed in accordance with all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.
- 19.9 The Data Processor shall provide all reasonable assistance (at the Data Controller's cost where applicable) to the Data Controller in complying with its obligations under the GDPR with respect to exercising data subject's rights, the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments (where applicable), and in dealings with the ICO.
- 19.10 The Data Processor shall not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld).
- 19.11 In the event that the Data Processor appoints a Sub-Processor (with the written consent of the Data Controller), the Data Processor shall enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Data Processor by this Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR.
- 19.12 When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:
- a) process the Personal Data only to the extent, and in such manner, as is necessary to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
  - b) implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;
  - c) if so requested by the Data Controller (and within the timescales required by the Data Controller where reasonable) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;
  - d) make available to the Data Controller all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR; and
  - e) inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.
- 19.13 The Data Controller shall be liable for all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred by, awarded against, or agreed to be paid by, the Data Processor and any Sub-Processor arising directly or in connection with:
- a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;
  - b) any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
  - c) any breach by the Data Controller of its obligations under this contract.
- 19.14 The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor.
- 19.15 Nothing in this contract (and this Clause 13) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.

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- 19.16 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller using hardware that the data controller has provided, in the format(s) reasonably requested by the Data Controller within a reasonable time after the earlier of the following:
- a) the end of the provision of the Services; or
  - b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under the Service Agreement.
- 19.17 Following the deletion, disposal, or return of the Personal Data, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.
- 19.18 All Personal Data to be deleted or disposed of by the Data Processor under this Agreement shall be deleted or disposed of using the following method(s): Secure deletion or shredding.

## 20. Governing Law

- 20.1 The Contract shall be governed by and construed in accordance with English law and soVision and the Customer agree to submit to the exclusive jurisdiction of the English Courts.