Terms & Conditions for the Supply of Goods and/or Services | Rev 1.7 January 2017

**1. Application of Conditions**

1.1 The Supplier (Herein after referred to as Omnisity) shall supply and the Customer who shall purchase the Goods and/or Services in accordance with the quotation/specification or schedule which are subject to these Conditions.

1.2 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

**2. Definitions and Interpretation**

2.1 In these Conditions:-

| | |
|---|---|
| "Business Day" | means any day other than a Saturday, Sunday or bank holiday; |
| "the Customer" | means the person or representative of an organisation who accepts a Proposal or offer of Omnisity for the sale of Goods and/or supply of Services, or whose order for the Goods and/or Services is accepted by Omnisity ; |
| "Commencement Date" | means the commencement date for this agreement as set out in the quotation/specification/schedule; |
| "the Contract" | means the contract for the purchase and sale of the Goods and/or supply of the Services under these terms and conditions; |
| "these Conditions" | means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and Omnisity Limited; |
| "the Delivery Date" | means the date on which the Goods and/or Services are to be delivered as stated in Proposal or stipulated in the Customer's order and accepted by Omnisity; |
| "the Goods" | means the goods which Omnisity or its authorised contractor is to supply in accordance with these Conditions whether those Goods be physical materials as per printed matter or electronic non tangible goods such as software, web based applications or other none physical deliverables; |
| "month" | means a calendar month; |
| "the Services" | means the Services to be provided to the Customer by Omnisity or its authorised contractor as set out in the Proposal and covers the delivery of all consultancy, design, and programming services; |
| "Omnisity" | means the Supplier, a company registered in England Registration No.4435288, With its registered office at 1 Newton House, LCP Pensnett Estate, Kingswinford, West Midlands, DY6 7YE; |
| "writing" | includes any communications effected by facsimile transmission, electronic mail or any comparable means; |
| "Proposal" | Includes any/all sales literature, price lists and other documents including, but not limited to tenders, proposals, quotation, specifications or schedules that display costs for the supply of goods and/or services; |
| "Application" | Means any software or Internet based solution including server based intranets, standalone distributable programs, websites and any other software based solutions; |
| "SLA" | SLA (or Service Level Agreement) means an official commitment that exists between Omnisity and the customer. |

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**3. Basis of Sale and Service**

3.1 The employees or agents of Omnisity are not authorised to make any representations concerning the Goods and/or Services unless confirmed by Omnisity in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Omnisity.

3.3 Sales literature, price lists and other documents including, but not limited to tenders, proposals, quotations, specifications or schedules issued by Omnisity in relation to the Goods and/or Services are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. An order placed by the Customer may not be withdrawn cancelled or altered prior to acceptance by Omnisity and no contract for the sale of the Goods and/or Services shall be binding on Omnisity unless Omnisity has issued a quotation which is expressed to be an offer to sell the Goods and/or Services or has accepted an order placed by the Customer by whichever is the earlier of:-

3.3.1 Omnisity's written acceptance;

3.3.2 delivery of the Goods; or

3.3.3 Omnisity's invoice.

3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, proposal, invoice or other document or information issued by Omnisity shall be subject to correction without any liability on the part of Omnisity.

**4. The Goods**

4.1 No order submitted by the Customer shall be deemed to be accepted by Omnisity unless and until confirmed in writing by Omnisity's authorised representative.

4.2 The specification for the Goods shall be those set out in Omnisity's Sales literature, price lists and other documents including, but not limited to tenders, proposals, quotation, specifications or schedules, unless varied expressly in the Customer's order (if accepted by Omnisity). The Goods will only be supplied in the quantities stated in Omnisity's Proposal. Orders received for quantities other than these will be adjusted accordingly, illustrations, photographs or descriptions whether in catalogues, brochures, price lists, Proposal or other documents issued by Omnisity are intended as a guide only and shall not be binding on Omnisity .

4.3 Omnisity reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to Omnisity's specification, which do not materially affect their quality or performance. In respect of software based solutions Omnisity reserves the right to change agreed system specification if the alterations are beneficial to the functionality and stability of the final system. Omnisity will outline in writing and seek agreement from the Customer prior to any enhancement/ development work.

4.4 No order which has been accepted by Omnisity may be cancelled by the Customer except with the agreement in writing of Omnisity on the terms that the Customer shall indemnify Omnisity in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Omnisity as a result of cancellation.

**5. The Services**

5.1 With effect from the Commencement Date Omnisity shall, in consideration of the Fees being paid in accordance with the Terms of Payment will provide the services expressly identified in the Proposal or otherwise agreed under this agreement.

5.2 Omnisity will use reasonable care and skill to perform the services identified in the Proposal or otherwise agreed under this agreement.

5.3 Omnisity shall use all reasonable endeavours to complete its obligations under the Schedule, but time will not be of the essence in the performance of these obligations.

**6. Price**

6.1 The price of the Goods and/or Services shall be the price stated in the Proposal current at the date of acceptance of the Customer's order or such other price as may be agreed in writing by Omnisity and the Customer.

6.2 Where Omnisity has quoted a price for Goods and/or Services the price quoted shall be valid for 30 days only or such lesser time as Omnisity may specify.

6.3 Omnisity reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to Omnisity which is due to any factor beyond the control of Omnisity (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture or supply), any change in delivery dates, quantities or specifications for the Goods and/or Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Omnisity adequate information or instructions.

6.4 Except as otherwise stated under the terms of any Proposal or in any price list of Omnisity, and unless otherwise agreed in writing between the Customer and Omnisity, all prices are inclusive of Omnisity's charges for packaging and transport for any supplied Goods as specified in the Proposal.

6.5 The price is exclusive of any applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and/or Services, which the Customer shall be additionally liable to pay to Omnisity.

**7. Payment**

7.1 All payments required to be made pursuant to this Agreement by either party shall be made within 30 (Thirty) days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

7.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of the price or any other sum due under these terms and conditions then Omnisity shall, without prejudice to any right which Omnisity may have pursuant to any statutory provision in force from time to time, have the right to charge the Customer interest on a daily basis at an annual rate equal to the aggregate of 6 (Six) per cent over the base rate of The Bank of England from time to time on any sum due and not paid on the due date. Such interest shall be calculated cumulatively on a daily basis and shall run from day to day and accrue after as well as before any judgement.

7.3 All payments shall be made to Omnisity as indicated on the form of acceptance or invoice issued by Omnisity.

**8. Delivery and Performance**

8.1 Delivery of the Goods shall be made by Omnisity delivering the Goods to the place in the United Kingdom specified in the Proposal.

8.2 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by Omnisity in writing. The Goods may be delivered by Omnisity in advance of the Delivery Date upon giving reasonable notice to the Customer.

8.3 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, Omnisity shall be entitled upon given written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provision of Condition 10.1 of these Conditions risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to Omnisity all costs and expenses including storage and insurance charges arising from such failure.

8.4 With effect from the Commencement Date Omnisity shall, in consideration of the amount(s) being paid in accordance with the Proposal will provide the services expressly identified in the Proposal (schedule) or otherwise agreed under this agreement.

**9. Non-Delivery of Goods and/or Services**

9.1 If Omnisity fails to deliver the Goods and/or Services and any of them on the Delivery Date other than for reasons outside Omnisity's reasonable control or the Customer's or its carrier's fault:-

9.1.1 if Omnisity delivers the Goods and/or Services at any time thereafter Omnisity shall have no liability in respect of such late delivery;

9.1.2 if the Customer gives written notice to Omnisity within 30 (Thirty) business days after the Delivery Date and Omnisity fails to deliver the Goods and/or Services within 30 (Thirty) Business Days after receiving such notice the Customer may cancel the order and Omnisity's liability shall be limited to the excess (if any) of the cost of the Customer (in the cheapest available market) of similar goods to those not delivered over the price of the Goods not delivered.

**10. Risk and Retention of Title**

10.1 Risk of damage to or loss of the Goods shall pass to the Customer at:

10.1.1 in the case of Goods to be delivered at Omnisity's premises, the time when Omnisity notifies the Customer that the Goods are available for collection;

10.1.2 in the case of Goods to be delivered otherwise than at Omnisity's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when Omnisity has tendered delivery of the Goods; or

10.1.3 in the case of goods being installed by Omnisity, the time that Omnisity notifies the Customer that the installation is complete.

10.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, legal and beneficial title of the Goods shall not pass to the Customer until Omnisity has received in cash or cleared funds payment in full of the price of the Goods.

10.3 [Sub-clause 10.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Customer until Omnisity has received in cash or cleared funds payment in full of the price of the Goods and any other goods and/or Service supplied by Omnisity and the Customer has repaid all moneys owed to Omnisity, regardless of how such indebtedness arose.]

10.4 Until payment has been made to Omnisity in accordance with these Conditions and title in the Goods or any Services already supplied has passed to the Customer, the Customer shall be in possession of the Goods as bailee for Omnisity and the Customer shall store the Goods separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by Omnisity and shall insure the Goods against all reasonable risks.

10.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of Omnisity, but if the Customer does so all money owing by the Customer to Omnisity shall (without prejudice to any other right or remedy of Omnisity) forthwith become due and payable.

10.6 Omnisity reserves the right to repossess any Goods in which Omnisity retains title without notice. The Customer irrevocably authorises Omnisity to enter the Customer's premises during normal business hours for the purpose of repossessing the Goods in which Omnisity retains title and inspecting the Goods to ensure compliance with the storage and identification requirements of sub-clause 10.4.

10.7 The Customer's right to possession of the Goods in which Omnisity maintains legal and beneficial title shall terminate if;

10.7.1 The Customer commits or permits any material breach of his obligations under these Conditions;

10.7.2 The Customer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with his creditors;

10.7.3 The Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;

10.7.4 The Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

10.8 The customers entitlement to the goods refers to the final output as proposed by Omnisity. All materials created as a necessity to facilitate the final output remain the property of Omnisity (eg. Raw materials such as stock imagery, video files, audio files, working files, composition files, project notes etc.) and do not form any part of the final output and are therefore not part of the deliverable goods unless otherwise agreed in writing prior to the commencement of the contract.

**11. Assignment**

11.1 Omnisity may assign the Contract or any part of it to any person, firm or company.

11.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Omnisity.

**12. Defective Goods**

12.1 If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery "condition and contents unknown" the Customer gives written notice of such defect to Omnisity within 3 (three) business days of such delivery, Omnisity shall at its option:-

12.1.1 replace the defective Goods within 30 (Thirty) days of receiving the Customer's notice; or

12.1.2 refund to the Customer the price for the goods which are defective; but Omnisity shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused or notice give by the Customer as aforesaid.

12.2 No Goods may be returned to Omnisity without the prior agreement in writing of Omnisity. Subject thereto any Goods returned which Omnisity is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at Omnisity's sole discretion Omnisity shall refund or credit to the Customer the price of such defective Goods but Omnisity shall have no further liability to the Customer.

12.3 Omnisity shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow Omnisity's instructions (whether oral or in writing), misuse or alteration of the Goods without Omnisity 's approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.

12.4 Goods, other than defective Goods returned under Conditions 12.1 or 12.2, returned by the Customer and accepted by Omnisity may be credited to the Customer at Omnisity 's sole discretion and without any obligation on the part of Omnisity .

12.5 Subject as expressly provided in these Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.6 The Customer shall be responsible to ensure that, except to the extent that instructions as to the use or sale of the Goods are contained in the labelling of, or instruction provided in the use of said Goods, any use or sale of the Goods by the Customer is in compliance with all applicable statutory handling and sale of the Goods by the Customer is carried out in accordance with directions given by Omnisity or any competent governmental or regulatory authority and the Customer will indemnify Omnisity against any liability loss or damage which Omnisity might suffer as a result of the Customer's failure to comply with this condition.

**13. Customer's Default**

13.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Omnisity, Omnisity shall be entitled to:-

13.1.1 cancel the order or suspend any further deliveries of Goods and/or Services to the Customer;

13.1.2 appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods supplied under any other contract between the Customer and Omnisity) as Omnisity may think fit (notwithstanding any purported appropriation by the Customer); and

13.2 This condition applies if:-

13.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or

13.2.2 the Customer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or

13.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

13.2.4 the Customer ceases, or threatens to cease, to carry on business; or

13.2.5 Omnisity reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

13.3 If Condition 13.2 applies then, without prejudice to any other right or remedy available to Omnisity, Omnisity shall be entitled to cancel the Contract or suspend any further deliveries of Goods and/or Services under the Contract without any liability to the Customer, and if the Goods and/or Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**14. Liability**

14.1 Except in respect of death or personal injury caused by Omnisity's negligence, Omnisity will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of this contract, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by Omnisity's servants or agents/third-party suppliers or otherwise) which arise out of or in connection with the supply of the Goods and/or Services.

14.2 The Customer shall indemnify Omnisity against all damages, costs, claims and expenses suffered arising from loss of business or damage to goodwill or credibility caused by the Customer, or its agents or employees, or any third-party suppliers directly or indirectly employed by either the customer or Omnisity unless otherwise stated in writing through a Service Level Agreement or otherwise.

14.3 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

14.4 Omnisity shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason (Contract) of any delay in performing, or any failure to perform, any of Omnisity's obligations if the delay or failure was due to any cause beyond Omnisity's reasonable control.

**15. Communications**

15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:

15.1.1 (in the case of communications to Omnisity) to its registered office or such changed address as shall be notified to the Customer by Omnisity; or

15.1.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to Omnisity by the Customer.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or

15.2.2 if delivered by hand, on the day of delivery; or

15.2.3 if sent by fax or electronic mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.

15.3 Communications addressed to Omnisity shall be marked for the attention of the Managing Director.

**16. Force Majeure**

16.1 In the event that either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 16.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.

16.2 Sub-clause 16.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.

16.3 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.

16.4 If and when the period of such incapacity exceeds 6 (Six) months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

**17. Maintenance Of The Application**

17.1. In return for payment of the Standard Annual Maintenance Fees Omnisity agrees that it shall carry out the Required Maintenance which term shall consist of the following:

17.1.1. Omnisity carrying out minor amendments and enhancements to the Application from time to time as are deemed necessary or desirable by Omnisity and as are agreed with the Customer, the Customer acknowledging that the extent of such amendments and enhancements shall vary depending on the maintenance fees payable by the Customer.

17.1.2. Omnisity remedying defects or malfunctions of the Application which the Customer has demonstrated to the reasonable satisfaction of Omnisity are not attributable to the Customer's misuse of the Application; and

17.1.3. Omnisity correcting actual problems which have occurred during the Customer's normal use of the Application which are not due to the default of the Customer. Omnisity will absorb all costs of time, materials and expenses directly associated with these services in connection with the required works to rectify any mechanical issues associated to the Application.

17.2. Omnisity agrees that it shall use its reasonable endeavours to respond to any request received by the Customer for the Maintenance within certain designated timescales, Omnisity and the Customer agreeing on the level of urgency of each request made to Omnisity by the Customer under this Agreement. The timescales shall be as follows:

17.2.1. for non-urgent requests within 15 Working Days;

17.2.2. for normal requests within 10 Working Days;

17.2.3. for urgent requests within 5 Working Days; and

17.2.4. for critical requests within 2 Working Days.

17.3. Under the circumstances listed below, Omnisity reserves the right to refuse the provision of the Maintenance. However if Omnisity in its absolute discretion chooses to provide the Maintenance then Omnisity will be entitled to charge for this provision at the Additional Maintenance Fees plus its out of pocket expenses. This discretionary maintenance shall apply where a fault results from:

17.3.1. the improper use, operation or neglect of the Application (save where this is caused by the direct negligence or default of Omnisity or its employees);

17.3.2. any failure by the Customer to implement recommendations or solutions in respect of faults previously advised by Omnisity;

17.3.3. the use of the Application by the Customer for a purpose for which it was not designed or intended;

17.3.4. the Customer's failure, inability or refusal to afford Omnisity's personnel reasonable access to the Application;

17.3.5. any accident or disaster affecting the Application (save where this is caused directly by the negligence of Omnisity or its employees);

17.3.6. any access or interference by unauthorised personnel whether employees of the Customer or not.

17.4 Unless expressly stated in writing no Service Level Agreement will exist between Omnisity and the Customer.

**18. Maintenance Delivery**

18.1. Unless otherwise agreed, any dates specified by Omnisity for maintenance of the Application are intended to be an estimate and time for completion shall not be made of the essence by notice.

18.2. The Customer acknowledges that Omnisity shall not be responsible for any delay in maintaining the Application if that delay is due, wholly or partly, to an act or omission of the Customer which shall include the quality of the information provided to Omnisity by the Customer. Wherever it appears to Omnisity that such delay is likely it shall use its reasonable endeavours to notify the Customer in advance.

18.3. Subject to the other provisions of this Agreement Omnisity will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in maintaining the Application (even if caused by Omnisity's negligence), nor will any delay entitle the Customer to terminate or rescind this Agreement unless such delay exceeds 180 days in any instance.

**19. Maintenance Warranties**

19.1. Omnisity warrants that it will perform the Maintenance with reasonable skill and care so that, where amendments and/or enhancements are made to the Application under Clause 17.1.1 the Application remains at the level of functionality set out in the Proposal and where the Application is maintained under Clauses 17.1.2 and/or Clause 17.1.3 is restored to the level of functionality set out in the Proposal.

**20. The Customer's Obligations**

The Customer shall:

20.1. Use all reasonable endeavours to ensure that the Application is used in accordance with any training/documentation and/or specifications as are provided from time to time by Omnisity;

20.2. Not allow any party other than Omnisity to repair or maintain the Application without prior permission from Omnisity; and

20.3. Notify Omnisity as soon as reasonably practicable if the Application requires support or is not operating correctly.

20.4. Unless expressly stated in the proposal the customer is responsible for the supply of textual and graphical content to ensure the application is fit for purpose.

20.5. Unless expressly stated in the proposal the customer is responsible for all data entry including uploading any graphical content/images and/or downloadable materials (PDF documents etc) to ensure the application is fit for purpose and:

20.5.1 ensure all supplied textual and graphical materials are fully compliant with all copyright laws in place at the time of submission and;

20.5.2 indemnify Omnisity against any legal action arising from the use of copyrighted textual and graphical materials that have been supplied to Omnisity, or included (uploaded, inserted, broadcast) at a later date into the application or final product.

20.5.3 Except all responsibility for its actions (or the actions of its employees, or third parties) that have been granted access to enable textual and graphical materials to be included (uploaded, inserted, broadcast) at a later date into the application or final product.

20.5.4 Ensure all textual and graphical materials to be included (uploaded, inserted, broadcast) at a later date into the application or final product are of a nondefamatory and decent nature.

20.6. The customer will not withhold payment for the application based on lack of content so long as Omnisity has fulfilled its obligations under the terms of the proposal. Nor will the customer withhold any payments due (stage payments or otherwise) if the application is deemed incomplete due to lack of content.

20.7. The customer will not withhold payments due (stage payments or otherwise) for any design work or artwork production, printed or otherwise if the design is deemed incomplete or incorrect due to lack of content, supply of incorrect content by the customer or any third party (including Omnisity), or the customers lack of ability to correctly proof read the content prior to production or distribution.

**21. Termination**

21.1 Either party shall be entitled to terminate the Contract at any time by giving not less than 30 days written notice.

21.2 Omnisity may terminate the Contract by immediate notice if the Client is more than 30 days overdue with any payment.

21.3 Where Omnisity is entitled to terminate the Contract under clause 21.1 or clause 21.2, without prejudice to any other remedy, Omnisity may elect to suspend the Services to the Customer for such period of not more than 12 weeks and Omnisity may terminate this Contract under clause 21.1 or 21.2 at any time during or at the end of such suspension if the breach by the Customer.

21.4 On termination of the Contract the obligations of Omnisity to provide the Services shall cease without prejudice to any accrued rights or liabilities of either party.

21.5 On termination of the Contract all monies payable by the Customer shall be immediately due and payable.

21.6 Where the Contract is terminated or suspended, no refund of any of the Charges paid in advance by the Customer shall be payable to the Customer except where the Contract is terminated due to Omnisity's default.

21.7 Omnisity accepts no liability for delays and interruption in the provision of the Services and may terminate or suspend immediately the Services for any period without liability for any resulting loss if provision of the Services is in any way adversely affected by any act or default on the part of the Customer, or any Act of God, war, civil commotion, strike, industrial action, fire or flood, or any other cause which Omnisity could not have been reasonably expected to prevent or which is beyond its control.

**22. Confidentiality**

22.1 The Customer shall not disclose to any person (except for the purposes of effecting insurance) any information relating to the Services and shall keep Omnisity indemnified against all losses and expenses incurred by Omnisity as a result of any disclosure or information in contravention of this clause.

22.2 Omnisity will not disclose any details of the Customer obtained during any tendering process or performance of the Contract to any third party unless written permission has been obtained from the Customer save where disclosure is required for the performance of the Services or by law.

**23. Data Protection**

23.1 "DPA" refers to the Data Protection Act 1998 as amended, extended or re-enacted from time to time and including any subordinate provision make under that Act; and

23.1.2 the terms "Personal Data", "Data Controller", "Data Processor" and "Process" (and "Processing") shall have the meanings given to them in the DPA;

23.2 To the extent Omnisity Processes any Personal or Commercial Data, either provided by the Customer or obtained by Omnisity from third-party suppliers on behalf of the Customer as part of performing its obligations under the Contract:

23.2.1 the Customer acknowledges that it is the Data Controller of the Data, and that Omnisity is acting on the Customer's behalf as a Data Processor of the Data;

23.2.2 the Customer:

i. will keep the Data reasonably confidential and reasonably secure from disclosure to unauthorised third parties; and

ii. will Process that Data only in accordance with the instructions of Omnisity (and Processing necessary to comply with the Contract shall be deemed to be an instruction).

23.2.3 The Customer will obtain and maintain all appropriate notifications and consents under the DPA in order to allow Omnisity to Process the Data that it is required to Process as part of performing its obligations under the Contract without such Processing contravening the DPA.

**24. Waiver**

No waiver by Omnisity of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**25. Severance**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

**26. Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

**27. Governing Law and Jurisdiction**

These terms and conditions shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.