

Terms of Service

PayPerCustomer Limited

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

Definitions.

Applicable Laws: all applicable laws, statutes, regulations from time to time in force.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Charges: the sums payable for the Services, as set out in 2.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Guarantor: As specified in Schedule 3.

Guaranteed Obligations: all present and future payment obligations and liabilities of the Customer due, owing or incurred under this Agreement to the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade mark, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Services: the services as set out in Client Agreement.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

VAT: value added tax chargeable in the UK

2.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

2.2 person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.3 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

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

2.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.7 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

2.10 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

2.11 A reference to writing or written includes fax and email.

2.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

2.13 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document, in each case as varied from time to time.

2.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. Commencement and duration

3.1 This agreement shall commence on the date in the Main Supplier/Customer Contract and shall continue, unless terminated earlier in accordance with 9 (Termination).

4. Charges and payment

4.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges contained within the Main Supplier/Customer Contract.

4.2 Given the nature of the Services, there are no refunds to the Customer.

4.3 The Supplier may increase the Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

4.4 The Supplier shall invoice the Customer for the Charges at the intervals specified in the Main Supplier/Customer Contract. If no intervals are so specified the Supplier shall invoice the Customer at the end of each month for Services performed during that month.

4.5 The Customer shall pay each month in accordance with the Main Supplier/Customer Contract of this Agreement.

4.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:

- a. the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this 3.6(a) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%;
- b. The Supplier may invoke the Guarantee as set out in the Main Supplier/Customer Contract;
- c. the Supplier may suspend all or part of the Services until payment has been made in full.

4.7 Should the Customer instigate a charge-back claim against the Supplier, the Customer shall pay an administration fee of £100 to the Supplier.

4.8 All sums payable to the Supplier under this agreement:

- a. are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- b. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5. Intellectual property rights

1. In relation to the Deliverables:

- a. the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables
- b. the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business; and
- c. the Customer shall not sub-license, assign or otherwise transfer the rights granted in 4.1(b).

6. Compliance with laws

1. In performing its obligations under this agreement, the Supplier shall comply with the Applicable Laws

7. Data protection

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This 6 (Data protection) is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
3. Either party may, at any time on not less than 30 days' notice, revise this 6 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

8. Confidentiality

1. Each party undertakes that it shall not at any time and for a period of two years after termination or expiry of this agreement disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by 7.2.
2. Each party may disclose the other party's confidential information:
 - a. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this 7; and
 - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

9. Limitation of liability

1. **Background to the limits and exclusions on the Supplier's liability.** The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
2. **Scope of this clause.** References to liability in this 8 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
3. **No limitation of the Customer's payment obligations.** Nothing in this shall limit the Customer's payment obligations under this agreement.
4. **Liability under identified clauses.** Nothing in this agreement shall limit the Customer's liability under 4.2 (IPR indemnities).
5. **Liabilities which cannot legally be limited.** Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
 - a. death or personal injury caused by negligence;
 - b. fraud or fraudulent misrepresentation; and
 - c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
6. **Cap on the Supplier's liability.** The Supplier's total liability to the Customer:
 - a. for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £1,000,000 for any one event or series of connected events;
 - b. for loss arising from the Supplier's failure to comply with its data processing obligations under 6 (Data protection) shall not exceed £1,000,000; and
 - c. for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed £1,000,000.

7. Specific heads of excluded loss. This specifies the types of losses that are excluded:

- a. loss of profits;
- b. loss of sales or business;
- c. loss of agreements or contracts;
- d. loss of anticipated savings;
- e. loss of use or corruption of software, data or information;
- f. loss of or damage to goodwill; and
- g. indirect or consequential loss.

8. Exclusion of statutory implied term. The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

9. No liability for claims not notified within two months. Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire two months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10. Termination

1. The parties may terminate the Agreement at any time in writing.
2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
 - a. the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of seven days after being notified in writing to do so;
 - b. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - c. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
 - d. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - e. the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - f. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company)
 - g. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
 - h. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;

- i. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- j. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- k. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 9.2(c) to clause 9.2(i) (inclusive);
- l. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- m. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

3. For the purposes of 9.2(a) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from a substantial portion of this agreement.

4. Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- a. the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

11. Obligations on termination and survival

1. Obligations on termination or expiry of this agreement:

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

2. Survival

- a. On termination or expiry of this agreement, the following clauses shall continue in force: 1 (Interpretation), 8 (Intellectual property rights), 7 (Confidentiality), 8 (Limitation of liability), 10 (Consequences of termination), 14 (Waiver), 16 (Severance), 18 (Conflict), 23 (Multi-tiered dispute resolution procedure), 24 (Governing law) and 25 (Jurisdiction).
- b. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

12. Force majeure

- 1. Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:
 - a. acts of God, flood, drought, earthquake or other natural disaster;
 - b. epidemic or pandemic;
 - c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - d. nuclear, chemical or biological contamination or sonic boom;
 - e. any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
 - f. collapse of buildings, fire, explosion or accident; and
 - g. interruption or failure of utility service.

2. Provided it has complied with 11.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

3. The Affected Party shall:

- a. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 14 days from its start], notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- b. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

4. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than eight weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 1 weeks' written notice to the Affected Party.

13. Assignment and other dealings

1. This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.
2. The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

14. Variation

1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Waiver

1. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
2. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16. Rights and remedies

1. The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Severance

1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
2. If any provision or part-provision of this agreement is deemed deleted under 16.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. Entire agreement

1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

19. Conflict

1. If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

20. No partnership or agency

1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. Third party rights

1. Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

22. Notices

1. Any notice given to a party under or in connection with this agreement shall be in writing and shall be:
 - a. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - b. sent by email to info@paypercustomer.co.uk
2. Any notice shall be deemed to have been received:
 - a. if delivered by hand, at the time the notice is left at the proper address;
 - b. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - c. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this 21.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

23. Counterparts

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

24. Multi-tiered dispute resolution procedure

- 1.** If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:
 - a.** either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, an appropriate employee of the Customer and the appropriate employee of the Supplier shall attempt in good faith to resolve the Dispute;
 - b.** if the Customer and the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a senior employee of the Customer and to a senior employee of the Supplier who shall attempt in good faith to resolve it; and
 - c.** if the senior employee of the Customer and the senior employee of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 14 days after the date of the ADR notice.

2. No party may commence any court proceedings under 25 (Jurisdiction) in relation to the whole or part of the Dispute until 21 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

3. If the Dispute is not resolved within 21 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 21 days, or the mediation terminates before the expiration of the said period of 21 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with 25 (Jurisdiction).

Governing law

- 1.** This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Jurisdiction

- 1.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.