

OTHER • MEDIA



The Other Media

Terms and Conditions

G-Cloud 10

THE OTHER MEDIA LIMITED – GENERAL TERMS OF BUSINESS

ORDER FORM

Contract Number:

This Agreement comprises of 3 parts;

- Part One - Order Form
- Part Two - Special Conditions and Service Description(s)
- Part Three - The OTHER Media, General Terms and Conditions

In the event of any conflict between the various parts of this Agreement and any provisions in it, the following order of precedence shall apply to the extent of any conflict; (i) Part 1 - The Order Form (ii) Part 2 – Special Conditions and Service Descriptions (iii) Part 3 - General Terms and Conditions.

Defined terms used in this Order Form shall bear their meanings as specified in the General Terms and Conditions (Part Three) or applicable Service Descriptions.

PART ONE

ORDER

Parties

1. THE OTHER MEDIA LIMITED (“OML”) of

3rd Floor, The Pavilion, 1 Newham’s Row, London, SE1 3UZ, Company No. 03468671

And

2. The CLIENT

[Insert client company name, address, and company/charity number]

OML Representative

Client

Representative

[Insert client representative name and email address]

Effective Date

Website URL

Commencement

Date

Term

Invoice Address

[Insert client company name, invoice address, company/charity number, and VAT number if applicable]

Services Stream

Options

1. SaaS Design & Development ☐
2. SaaS Application Support ☐
3. SaaS Platform Support ☐
4. Specialist G-Cloud Services ☐

Payment Terms

All OML invoices are due and payable within 15 days of date of invoice.

Stage Payments

In respect of any stage or milestone payments, such payments must be received in cleared funds on the due date stated in the applicable Fees matrix.

Fees**SaaS Cloud Design & Development Fees Matrix**

- Client shall, subject to applicable qualifications set out in any Special Conditions, pay the sums set out below, up to the agreed total of **XXX** + VAT:

SaaS Application Support Fees Matrix

- The quarterly advanced payments applicable from the Commencement Date, for the Term, are set out below (exclusive of VAT):

Type	Quarterly cost (£)
Application Support and maintenance	XXX

SaaS Platform Support Fees Matrix

- The quarterly advanced payments applicable from the Commencement Date, for the Term, are set out below (exclusive of VAT):

Type	Quarterly cost (£)
Platform Support and maintenance	XXX

Business Analysis / Transition Management / Information Management and Digital Continuity for Cloud Services Fees Matrix

- Client shall, subject to applicable qualifications set out in any Special Conditions, pay the sums set out below, up to the agreed total of **XXX** + VAT:

Signatures

This Agreement is signed by the duly authorised representatives of the parties as set out below:

1. For and on behalf of **The Other Media Limited**

2. For and on behalf of **[Client]**

PART TWO - SPECIAL CONDITIONS & SERVICE DESCRIPTIONS**1. SAAS DESIGN & DEVELOPMENT SERVICES**

- 1.1 Terms defined in the Part 3 - General Terms and Conditions apply in these Special Conditions.
- 1.2 Client acknowledges that progression of the "Project" can only be achieved by prompt engagement and approval on Client's part at each stage throughout the process. Client agrees to promptly provide any written approvals requested by OML in respect of any Deliverable and that its failure to do so within 5 days of such a request shall constitute deemed acceptance of the applicable request or Deliverable. OML shall allocate a project manager to Client for the Project who shall be Client's principal point of contact at OML during the project. Further, Client may appoint a "Client Representative" as its authorised representative for the purposes of this Agreement.
- 1.3 In the event that Client wishes to discontinue part of the Project for any reason or delays progress such that the Project ceases to become viable, OML shall be entitled to terminate the Agreement without liability in respect of such termination on 7 days notice to Client and Client shall then promptly compensate OML (against OML's invoice for the same) for its time and materials based costs incurred up to the date of the termination.
- 1.4 Delivery and completion of the Project shall be achieved following successful testing of the Project by OML. OML shall offer Client the ability to carry out user acceptance testing for a limited defined period of time. Client shall provide OML with its written acceptance prior to any Project 'go-live'. Such acceptance shall be deemed as given by Client if Client has not responded to OML's request within 5 days, or if Client makes any live commercial use of the Project.
- 1.5 Client shall have the right to terminate the Agreement or a part thereof, without further liability to OML, at the end of each stage of the programme of work upon written notice to OML. If Client exercises this right, Client warrants and undertakes to pay OML's Fees in relation to the work and all Services that have been delivered or carried out in relation to the completed stage(s) as at the date of termination, and if applicable, as is set out above in the Fees matrix.
- 1.6 Client shall ensure that its Client Representative shall at all times have approval ability for the project and be responsible for performing Client's obligations under this Agreement. Client shall ensure that it (whether via its Client Representative or otherwise) maintains clear and regular communication with OML on any matters reasonably requested by OML in respect of the project, its progression and/or Client Materials. Client shall provide its responses with such information and/or materials in a timely manner pursuant to OML's requests for the same.
- 1.7 OML warrants that the Project will be delivered in accordance with the agreed Specification set out in the Service Description for 30 days from the date of Client's acceptance given under special condition 1.4 above and OML shall make all reasonable endeavours to remedy any material defect upon its being notified by Client within the 30 day period (provided always that such material defect has not resulted wholly from any act, default or negligence on the part of Client, its employees, third party contractors, or third party Standard Software suppliers). Thereafter OML shall

have no liability in respect of the Project, and any maintenance and/or support to be provided by OML shall be subject to separate written agreement for such services unless explicitly included in the Order in Part One above.

- 1.8 OML shall commence provision of the Services pursuant to Client's request for proposal or as otherwise agreed between the parties.

2. APPLICATION SUPPORT SERVICES

- 2.1 If at any time OML becomes aware that the Deliverable is not operating correctly, it shall use all reasonable endeavours to supply initial Fault diagnosis and correct any Fault within four hours of being informed of the fault if applicable, (and if the source of the fault is within OML's control), and in any case priority will be assigned subject to clause 2.9.
- 2.2 OML shall ensure that any third party products are supplied in accordance with the relevant third party's standard terms to which Client undertakes to adhere, and that the applicable licence costs for such products are clearly shown in addition to the Fees.
- 2.3 Application Support Services ("Support") will address maintenance issues requiring project management time (including time for the investigation of any issues) for managing the support process and in each case fully briefing the developer/designer/interface team (depending on the nature of the support issue). Application Support Services also includes time incurred investigating third party issues that may be affecting the Deliverables.
- 2.4 OML shall enable Client to purchase Support pre-booked in blocks of 4 hours (half a day), 8 hours (one day) and in half day blocks thereafter on a "per calendar month" basis and to "call-off" such Support against ongoing maintenance, design, minor works, support, and marketing or training activities.
- 2.5 OML will allocate resources required for Support once an agreed Support item has been added to the Support Board and the estimated time for the work required has been agreed with Client. In certain cases Client may be given access to the Support Board to report and track issues that have been flagged. OML shall prioritise all Support items prior to commencing resolution measures. Priority will be determined between OML and Client on the basis of the following criteria:
- 2.5.1 Nature of the Fault
- 2.5.2 Number of users impacted
- 2.5.3 Business capability impact
- 2.6 There are three "Priority" levels for all Support work:

P	Definition of priority	Time to respond	Estimated time to resolve
1	Critical failure; Service inoperable or no transactions	Within 15 mins	80% typically resolved within 4 hours
2	Visible issue but not a critical failure	1 hour	80% typically resolved by next general software release within 1 week

3	Non urgent work	1 day	80% typically resolved by next general software release within 1 months
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2.7 For those Support issues that are Priority 1, Client shall ensure that it notifies OML with a telephone call during Working Hours so that OML can commence work on the issue as soon as reasonably practicable, and irrespective of whether Client has logged the issue in the Support Board.

2.8 For all other Priority issues, the OML Representative and Client Representative will communicate regularly in respect of work progress, including via the Support Board.

2.9 OML will use its reasonable endeavours to meet agreed response times and applicable estimated completion times for Faults and flagged issues. Client agrees and acknowledges that because of the nature of complex technical infrastructure and systems resolution times are Target Times only and governed by fully ascertained diagnostic results.

2.10 All reported and logged issues will be attended to and deployed from a local environment to Client's development site once the issue is resolved. At this point the issue will be tested by the OML Representative and then notified to Client for verification. Once signed-off by Client as complete, the remedied issue will be deployed to the live serving environment. Estimated resolution times do not include time Client may require for verification, and OML bears no liability for the impact of any such verification on its ability or any failure to meet estimated issue resolution times.

2.11 Hours of support (including "out of Working Hours Support")

2.11.1 Support is provided during Working Hours. Additional to such Support, OML will provide "out of Working Hours" Support during periods of predicted high traffic, for example during mass media promotions on TV, radio, billboards featuring Client's website address.

2.11.2 Client shall give OML no less than 2 weeks notice of any such large-scale promotion involving the media so that appropriate resources can be allocated for the likely out of Working Hours Support Client may request. OML will make reasonable endeavours to accommodate all of Client's "out of Working Hours Support" requests but OML does not warrant or undertake to do so during times of high demand. OML recommends that Client provide as much notice as possible to OML for advance resource planning.

2.12 Support costs

2.12.1 "Pre-booked Support": Client has booked a set number of Support days that may be used for any Support work during the Term and these are shown in the Fees section of the Order Form. Unused hours at the end of the Term are discarded. Client shall forecast its budget requirements for Support and endeavour to arrange for that time to be booked accordingly.

2.12.2 OML's Fees for pre-booked Support shall be invoiced quarterly in accordance with the Order Form. Fees for any unused pre-booked Support are non-refundable. OML will provide

Client with a report at the start of each month outlining Client's use of Support used in the previous month.

2.12.3 Pre-booked Out of Working Hours Support can be provided for evening, weekend, and bank holidays. At the Effective Date, Fees for pre-booked Out of Working Hours Support are;

2.12.3.1 An 'on call' fee of;

2.12.3.1.1 £90 + VAT per person for Support cover for evening and weekends

2.12.3.1.2 £180 + VAT per person for Support cover, for bank holidays

2.12.3.2 Overage Fees of;

2.12.3.2.1 £90 per hour + VAT, per person for Support cover for evenings and weekends

2.12.3.2.2 £180 per hour + VAT, per person for Support cover for bank holidays

a. Any "ad-hoc support" (non pre-booked) time requested by Client will be charged at the rate of £125 per hour + VAT for weekday office hours, evenings and weekend, and £250 per hour + VAT for bank holidays.

b. Ad-hoc support: Any maintenance or Support services provided on an ad-hoc basis will be invoiced by OML to Client on a time-taken basis for work carried out to manage and maintain the issue in question. Ad-hoc support and maintenance will be invoiced monthly at the end of the month in which the actual Support services are carried out and completed (such that for example if there are 3 issues resolved in one month, these will be invoiced together at the end of that month).

3. PLATFORM SUPPORT SERVICES

3.1 OML shall provide the Platform Support Services as set out in the applicable Service Description.

3.2 OML warrants that the Specified Equipment will operate uninterrupted and free of errors caused by network infrastructure to the extent reasonably possible, (and in accordance with the relevant third party's standard terms if applicable), and up to a standard of 99.9%. OML will manage resolution of platform faults as soon as is reasonably possible. OML shall use all reasonable endeavours to meet any Target Times, dates, or timescales set out in the Agreement.

3.3 OML may from time to time suspend availability of the Services for the purposes of (i) maintenance, improvements to software, equipment or the Services or, (ii) in the event of non-payment of Fees by Client.

3.4 OML shall ensure that scheduled maintenance is performed outside of normal Working Hours, and Client shall wherever reasonably possible be informed 48 hours in advance, or in exceptional circumstances, immediately prior to such interruption. OML shall notify Client of the details of the interruption and likely duration and Client will use its reasonable endeavours to minimise any disruption caused. OML shall use reasonable endeavours to ensure that any scheduled maintenance period is no longer than 4 hours. If the period required is estimated to exceed 4 hours then

the maintenance will be carried out at the most convenient time (evenings or weekends) as agreed between OML and Client.

- 3.5 In the event that disaster recovery is activated due to the catastrophic failure of Client's hosted hardware or software or otherwise, OML shall work with the Client's chosen hosting provider, and will use its reasonable endeavours to ensure that the Services are resumed within the shortest time possible (to a Target Time of 4 hours).
- 3.6 OML will facilitate access to the Services by Client, and Client shall adhere to any applicable instructions provided by OML from time to time, such that the Service is accessible to Client at all times, subject to Special Conditions 3.2 for Platform Support, during the Term.
- 3.7 OML Representative shall follow up all issues with an email (if appropriate) detailing any actions or progress. OML will address critical system issues preventing operation of the Service as soon as is reasonably possible, prioritising such issues in the Support Board.
- 3.8 OML may, without terminating the Services or the Agreement, suspend provision of any Service (in whole or in part):
 - 3.8.1 With immediate effect if OML has reasonable grounds to believe that Client is in breach of any material obligation
 - 3.8.2 With immediate effect if an undisputed invoice (or an undisputed part of an invoice) is not paid in full by its due date and Client fails to remedy such default within 5 working days of notice requiring the default to be remedied; and/or
 - 3.8.3 With immediate effect if OML is obliged to comply with the order, instruction or request of a court, government agency, emergency services organisation or other competent judicial, administrative or regulatory authority; and/or
 - 3.8.4 For operational reasons (including but not limited to planned or emergency works) when effected by the Service Provider under its applicable services and support methodologies.
- 3.9 OML's right to suspend a Service under special condition 3.8 above is without prejudice to OML's other rights and remedies under the Agreement or otherwise including without limitation its termination rights in this Agreement.
- 3.10 Platform Support Services include platform performance optimization, operating system patching, scaling up and down of the solution, security overviews, and backup as required from time to time.
- 3.11 Standard Platform Support Services include; Monday to Friday 9.00am to 5.00pm excluding Public Holidays, e.g. Bank Holidays, Easter Holidays and Christmas Holidays
- 3.12 Platform Support Services can be provided out of office hours; evenings and weekends (including bank holidays) at an additional cost if required.

PART 3 – GENERAL TERMS AND CONDITIONS

These General Terms and Conditions for services (“**Terms**”) are made as of the Effective Date between the parties stated in the Order Form to which these Terms are attached, which together with the Service Descriptions also attached to the Order Form collectively constitute the “**Agreement**”. References to “**clauses**” means the clauses of these Terms.

1. Definitions:

“**Additional Services**” shall mean any services provided by OML additional to the Services.

“**Associated Company**” means any company, person or entity directly or indirectly controlled by, controlling, or under common control with either party (or any successor or assignee company of that party), where control or controlled has the meaning given to it in section 574(2) of the UK Capital Allowances Act 2001.

“**Application Support**” means technical support required by Client in respect of its Services.

“**Bespoke Work**” shall mean elements that relate to “look and feel” (including but not limited to screen shots, text, graphics, images and sounds and the content of the database relating to Client), but not including rights in any embedded code or in any identifiable and original code or concept developed by OML outside the scope of the Deliverables.

“**Change**” means a variation of the Services, whether resulting from a change in the Service or otherwise.

“**Change Control Procedure**” means the procedure set out in clause 13 by which the Services will be varied resulting from an actual or proposed Change.

“**Client Materials**” means any works, materials, know how, technical resource other proprietary information or any other materials and equipment belonging to Client required by OML to enable OML to perform the Services pursuant to the Agreement.

“**Client Representative**” means the person appointed by Client from time to time as its principal point of contact for the purposes of this Agreement and notified in writing to OML with authority to bind Client.

“**Client Site**” means where applicable the premises specified in the Order Form (or such other site as shall be agreed between the parties in writing).

“**Client System**” means Client’s back-office systems.

“**Commencement Date**” means the date stated in the Order Form as anticipated first commencement of Services by OML, which shall be the date Client signs off as ready for “go-live”.

“**Deliverables**” means such items (including the System, Standard Software and the Bespoke Work as applicable) as are specified by a Service Description as to be delivered to the Client.

“**Expenses**” shall mean those additional and reasonable costs incurred by OML in relation to its provision of the Services including without limitation travel, lodging, subsistence, and consumables (mileage will be charged at 45p per mile, high quality high gloss printing will be charged at £3 per sheet) and at cost to OML.

“**Effective Date**” means the date of execution of the Agreement by both parties as specified in the Order Form.

“**Fault**” means a technical failure to perform in accordance with normal or pre-defined parameters or thresholds as are set out in the Agreement.

“**Fees**” means the fees set out in the Order Form for the Services together with any other fees based on hourly rate(s) for any Additional Services, and any rental charges (all exclusive of VAT). Hourly rates for Additional Services shall be OML’s prevailing rates from time to time as available upon request.

“**Final Payment**” means the last payment stated as due in the applicable Fees matrix.

“**Goods**” means any hardware or software and related products that the Client purchases from OML.

“**Inappropriate Content**” means content which infringes any applicable laws, regulations or third party rights including without limitation material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial or religious hatred, menacing, blasphemous, invasive of privacy or in breach of any third party intellectual property rights.

“**Intellectual Property Rights**” means copyrights, patents, utility models, trade marks, service marks, design rights (whether registered or unregistered), database rights, semiconductor topography rights, proprietary and confidential information rights and all other similar proprietary rights as may exist anywhere in the world together with all applications, extensions and/or renewals in respect of any of the same.

“**Order Form**” means the sales order form signed by Client to which these Terms are attached.

“**Personnel**” means any officer, employee, agent or contractor of OML duly authorised by OML and acting in accordance with OML approved internal procedures.

“**Project**” the Goods and/or Services to be supplied by OML to the Client.

“**Service Description(s)**” means the specifications for the various Services attached to the Order Form and which form part of the Agreement.

“**Services**” means all the, support, design, development, supply, delivery, installation, training, testing and Cloud hosting services, including the Software as a Service, and Migration Services, and all other services provided by OML as are specified in the Service Descriptions applicable to each component thereof.

“**Service Levels**” means (as applicable) such levels of service as may be set out in the Service Descriptions in respect of a Service component.

“**Specification**” means the technical specification of the Services and the Deliverables as is set out in the applicable Service Description.

“**Standard Software**” shall mean the programs (and associated documentation), as supplied or advised by OML to Client to support the Service.

“**Specified Equipment**” means the computer or computers (including operating systems) on which the Standard Software operates as supplied or advised by OML and as specified in the applicable Service Description.

'Support Board' means OML's online support and maintenance fault management system.

'System' shall mean the Website and where applicable the technical environment to be built pursuant to the applicable Service Description(s).

'Target Time(s)' means the maximum timeframe stated as within which OML shall fulfil an element of the Services.

'Timetable' means any programme of work as identified in the Order Form, which shall set out the timing and sequence of the Services to be provided as agreed between the Parties.

'Website' means the website located at the URL stated in the Order Form or such other website(s) as the parties may agree (pursuant to clause 13 of the General Terms and Conditions) shall be the subject of the Services.

'Working Hours' means 9.00am to 5.00pm Monday to Friday.

2. The Services

- 2.1 In consideration of payment of the Fees, and provided Client complies with the terms of this Agreement, OML shall perform the Services from the Effective Date and provide the Deliverables to Client pursuant to any Timetable and in accordance with applicable Service Descriptions and the terms of the Agreement.
- 2.2 Any agreed Additional Services shall bear such additional fees as may be agreed between the Parties whether under the Change Control Procedure or otherwise. Such Additional Services will be agreed between the parties under a "work order" (which shall constitute a variation to the Agreement under clause 13.5) identifying the scope and price of the Additional Services and which shall otherwise be governed by the Agreement.

3. Client's Obligations

- 3.1 Client shall where requested by OML provide OML in a timely manner with the Client Materials. All Client Materials supplied shall remain Client's property and during the subsistence of the Agreement OML shall keep and maintain the Client Materials under appropriate conditions and with reasonable care, subject in the case of equipment to fair wear and tear.
- 3.2 Client hereby grants OML a non-exclusive licence to use and reproduce the Client Materials for the purposes of providing the Services and incorporating the Client Materials into the Deliverables.
- 3.3 Client shall indemnify and keep indemnified OML in respect of any and all damages, losses, costs and expenses (including legal costs and expenses) that OML may suffer or incur as a result of any third party action, claim or assertion that OML's use or possession of any of the Client Materials under or in connection with this Agreement and/or OML's provision of the Services infringes the Intellectual Property Rights of a third party or otherwise.
- 3.4 Client shall ensure that any log-on details or passwords issued to or used by Client in relation to the Services are not disclosed to unauthorised users or third parties. Client shall ensure that its personnel benefiting from technical infrastructure the subject matter of the Services are appropriately trained and adequately qualified in that respect.

- 3.5 Client shall permit OML remote access to the Client System for the purpose of performing the Services. Save where OML is providing internet access as part of the Services, provision of the Services shall be contingent on Client providing continuous internet access to the Client System and Client shall use all reasonable endeavours to ensure that such access is uninterrupted and error-free. Client acknowledges that OML is not responsible for any failure to provide Services resulting from any interruption to the internet access.

- 3.6 Save to the extent OML is responsible for data back up as part of the Services, Client agrees to be responsible for maintaining a valid readable backup of any Client data, and shall make the same available to OML in the event of any data loss.

- 3.7 Client shall make available appropriate personnel to liaise with OML including without limitation the Client Representative, to enable OML to provide the Services and to co-operate fully with Personnel. Client shall provide OML and its Personnel with such access to the Client Site (or other premises, records and materials) sufficient to enable OML to fulfil its obligations under this Agreement. Client shall advise OML of any policies and security rules in force for the conduct of Personnel at the Client's Site.

- 3.8 Client shall at OML's request, make available to OML, free of charge, a complete copy of the latest issue of all and any manuals, software disks and documentation relating to the Client System.

- 3.9 Client shall obtain at its own expense all necessary permissions that may be required to allow OML to provide the Services.

- 3.10 Client agrees that it shall not unreasonably or without due cause interrupt or interfere with OML's provision of the Services, notwithstanding Client's other rights and remedies.

- 3.11 Where after the Effective Date OML is delayed or impeded by any act or omission of the Client or Force Majeure circumstance (and provided that OML has notified the Client in writing of such delay or impediment and made reasonable efforts to reduce their effect) the Timetable (if any) shall be extended by a timeframe equal to the period of delay, impediment or Force Majeure.

- 3.12 Client shall permit OML to install such third party released service software packs as OML may require from time to time, and Client agrees that where it refuses to do so OML shall not be obliged to meet any applicable Service Level. Client shall retain all original software operating and application system discs.

- 3.13 Client shall insure all OML owned and provided equipment detailed in the Order Form for loss, damage, or misuse of no less than the value designated in the Order Form.

4. Payment

- 4.1 In consideration of the provision of the Services Client shall pay OML's invoices for the Fees at the times stated in the Order Form without any set-off or deduction. OML's invoices for any Additional Services are due and payable no later than fifteen (15) days from their applicable date.

- 4.2 Unless OML agrees otherwise in writing, all Expenses including without limitation printing, reproduction or purchase costs of all drawings,

documents, travelling and subsistence expenses and the like incurred by OML are excluded from the Fees.

- 4.3 OML may withdraw or suspend the Services in the event that any payment is not settled by its due date, provided that OML has given no less than 14 days notice of such non-payment to Client.
- 4.4 Overdue amounts shall bear interest at 8 percent above the base rate of HSBC Bank plc (from time to time) such interest shall be calculated on a daily basis from the date on which payment was due to the date of actual payment, both dates inclusive.
- 4.5 In any circumstances where OML is required to make payments or assume liabilities on Client's behalf pursuant to its Services, it shall do so as agent for Client and Client agrees to be bound by the applicable third party supplier's terms and conditions provided that the Client Representative has been provided with a copy of such terms and conditions and has given prior written approval to OML. OML shall not so make payments or assume liabilities on Client's behalf except after discussion of the issue with Client and receipt of the Client's Representative's prior written approval. Client shall either make payment to OML on the presentation of invoices covering such payments or liabilities or, if OML so directs, settle such invoices or accept such liabilities direct with the third party provider. Client indemnifies OML against any such liability incurred by OML on its behalf and against any other liability that OML may have under any such contracts with suppliers approved by Client under this clause 4.5.

5. Dispute Resolution

- 5.1 If a dispute arises between the parties (other than in relation to Change Control which shall be treated in accordance with the provisions of clause 13), any dispute which cannot be resolved within 7 days of first arising shall be escalated to the authorised representative of the parties (or person of equivalent status with authority given by a party to negotiate) in writing, and if it is not resolved within a further seven days, shall be escalated by notice in writing to the parties' senior management, without recourse to legal proceedings. Each party's authorised representatives will be nominated in writing from time to time.
- 5.2 The parties' senior management shall meet promptly to discuss the dispute and shall make all reasonable endeavours to resolve the dispute in good faith to their mutual satisfaction.

6. Term and Termination

- 6.1 Subject always to clause 6.2, this Agreement is effective from the Effective Date for the term listed on the Order Form ("the Initial Term") and shall then subsist for a further period or periods of one year (a "Subsequent Term") unless terminated by Client giving to OML no less than 90 days' prior written notice expiring on the last day of the Initial Term or any Subsequent Term. OML may give Client 90 days written notice of termination at any time after the last day of the Initial Term. No earlier than 90 days from the end date of the Initial Term (or any Subsequent Term), OML may give Client notice of its proposed Fees for the Subsequent Term. Where these are accepted by Client, or in the absence of any notice to the contrary, these new Fees shall apply from the commencement of the Subsequent Term. Where

Client notifies OML that it does not accept the proposed Fees, OML may at its option give Client no less than 14 days notice of termination to expire on the last day of the Initial Term (or any Subsequent Term as applicable). In the event that OML does not give notice of termination as aforesaid, the Agreement shall continue for the Subsequent Term on the basis of the then current Fees. OML reserves the right to give Client notice of a proposed increase in the Fees for annual renewals of the Initial Term by a minimum of 1% above the Retail Price Index (RPI), and such notice will be treated as a notice of proposed Fees in respect of a Subsequent Term in accordance with the foregoing provisions of this clause 6.1.

- 6.2 Either party shall be entitled to terminate this Agreement at any time without notice if the other party ceases or threatens to cease to carry on business; or the other party is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation shall be bound by and assume that party's obligations hereunder) or compounds with or convenes a meeting of its creditors or has a receiver, manager or administrator appointed.
- 6.3 Either party may terminate this Agreement by written notice to the other if that other party is in breach of a material term of these Terms and has not remedied such breach within 28 days of the date of a written notice requesting it to do so.
- 6.4 OML shall have the right to terminate the Agreement immediately upon written notice if required for legal or regulatory issues.
- 6.5 On termination of the Agreement for whatever reason, licences granted to OML shall terminate immediately and OML shall promptly return all Client Materials and where applicable any Specification identified as a Deliverable to Client, save where Client has outstanding unpaid invoices in respect of Services or Expenses when OML shall be entitled to retain such Client Materials until such invoices are paid in full by Client.
- 6.6 On request, and in any event on termination of this Agreement for whatever reason, in the absence of written consent of the other each party shall deliver up to the other all confidential information of the other in its possession or under its control held in any tangible form and (to the extent not so comprised therein) all other documents and tangible property belonging to the other and, in the case of OML, any document which OML has produced specifically for the Client and in the course of performing the Services which may be in OML's possession or under its control, and neither party shall thereafter, without the prior written consent of the other, use, make or retain copies of any such items nor use in any way any of the other's confidential information.
- 6.7 Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination. Clauses 1, 3.2, 3.3, 4.5, 6.5, 6.6, 6.7, 7, 8, 9.3, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22 and 23 shall, for the avoidance of doubt, survive the expiration or sooner termination of this Agreement and shall remain in force and effect.

7. Force Majeure

7.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. In the case of either party such cause will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of that party, its servants, agents or employees.

7.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure or (in the case of OML) which is due to a Force Majeure event affecting a third party provider to OML.

7.3 Without prejudice to the generality of the foregoing, OML will not be responsible for any default, failure or outage which OML reasonably determines has occurred (i) as a result of acts or omissions of the Client or its employees, agents, contractors, or vendors, or anyone gaining access to the OML network or Client's networks by means of Client's passwords or equipment (or the passwords or equipment of the Client's employees, agents, contractors, or vendors) (whether or not authorised); or (ii) is attributable to any Client content or materials, including but not limited to software.

8. Confidential Information

8.1 All information, know-how, drawings, specifications, documentation, software listings or code which OML may have imparted and may from time to time impart to Client including, without limitation, relating to any methodology, diagnostic software or hardware or generally to the Services ("OML Confidential Information") is confidential and Client agrees that it shall use OML Confidential Information solely in accordance with the provisions of this Agreement and that it shall not at any time during or after expiry or termination of this Agreement disclose the same whether directly or indirectly to any third party without OML's prior written consent.

8.2 Client further agrees that it shall not itself or through any subsidiary, agent or third party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with any diagnostic software or hardware or variations, modifications, copies, releases, versions or enhancements thereof or, except as permitted by the law relating to this Agreement, have any software or other program written or developed for it based on any confidential information supplied to it by OML.

8.3 All information relating to Client's business, including (without limitation) all know-how, drawings, specifications, documentation and software which Client may have imparted and may from time to time impart to OML ("Client Confidential Information") is confidential and OML agrees to keep all Client Confidential Information strictly confidential and not to disclose any Client Confidential Information to any third party, save where prior authority in writing from

a duly authorised representative of the Client has been given to OML.

8.4 The foregoing provisions shall not prevent the disclosure or use by either party of any such information (i) which is as at the date of this Agreement or through no fault of that party hereafter enters into the public domain; (ii) which that party is required to by a legally competent body to disclose in connection with any court proceeding, arbitration or injunction; (iii) to its legal or other professional advisors from time to time under strict conditions of confidentiality.

9. Warranties

9.1 Both parties warrant and represent that they have full capacity and authority to enter into and perform this Agreement.

9.2 Client warrants that the performance by OML of the Services will not cause OML to infringe any third party rights in the System or any third party item where any of the foregoing is supplied or made available directly or indirectly by Client.

9.3 Except as otherwise stated in this Agreement all terms, warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

10. Intellectual Property Rights

10.1 All Intellectual Property Rights in the Standard Software and any software or works underlying the Deliverables which are either licensed by OML from third parties or proprietary to OML shall remain at all times vested in OML or the third party licensor (as applicable).

10.2 On receipt of any final payment due to OML under this Agreement, and subject always to compliance by the Client with the terms of this Agreement, OML hereby grants Client a non-exclusive licence to use the final version of the Services.

10.3 The licence granted by OML to Client does not allow modification to any of the source code of the Standard Software, and modification of the source code will be deemed to be a breach of the licence agreement.

10.4 OML shall ensure that any third party owned products are supplied in accordance with the relevant licensor's standard terms and that the applicable initial licence fees for such products are included in the Fees (unless paid directly to the licensor(s) by Client. Client bears responsibility for any Subsequent Term third party licences, and Client indemnifies OML against any costs, expenses or actions that may arise as a result of Client's failure to pay any of the same.

10.5 Client acknowledges that save as expressly set out in the Agreement, any and all Intellectual Property Rights used in connection with the provision of the Services and any Deliverables and provided by OML under this Agreement, are and shall remain the property of OML or its licensors.

10.6 OML will (and in the case of any third party provided software, to the extent itself indemnified by such third party) indemnify the Client against all liability arising under any injunction or final judgement or any settlement in respect of any infringement in the United Kingdom of any Intellectual Property Right of any third party in connection with any software or

materials provided by OML to the Client for the Client's use, in performing the Services or otherwise hereunder provided always that the Client complies in all material respects with clauses 10.7 and 10.8.

- 10.7 Client must promptly notify OML of any allegations of infringement coming to its attention and provide OML with all information in its possession in relation thereto. OML shall conduct all negotiations and litigation at its own expense and with exclusive control.
- 10.8 Client shall give reasonable assistance to OML in connection with any claim made against OML or the Client under this clause and Client shall not make any admissions without the prior written consent of OML.
- 10.9 If a claim for infringement or alleged infringement of any Intellectual Property Right of any third party is made or is in OML's reasonable opinion likely to be made, OML may at its sole option and own expense either:
 - 10.9.1 Modify or substitute all or part of the software and/or materials without reducing their performance and functionality, so as to avoid any such infringement and these terms shall apply to such modified or substituted software and/or materials; or
 - 10.9.2 Procure a licence on reasonable terms for Client to use the software and/or materials in such manner as shall not interfere with Client's intended use of such software and/or materials.
- 10.10 The foregoing provisions of this Clause 10 shall not apply insofar as any such claim or demand or action is in respect of any use by or on behalf of Client, where applicable, of anything supplied by OML in connection with this Agreement in combination with any item not so supplied where such use of the item directly gives rise to the claim, demand or action, or in a manner not reasonably to be inferred from its specification or requirements of use.

11. Limitation of Liability

- 11.1 Neither party excludes or limits liability to the other party for death or personal injury resulting from the negligence of the other party, its employees or agents, or for any liabilities that cannot be excluded or limited at law.
- 11.2 Subject always to clause 11.1 and save in respect of loss or damage covered by clause 11.6, the liability of OML under or howsoever arising in tort, contract or otherwise in connection with this Agreement for each event or series of related events giving rise to such liability shall be limited to damages which in no event shall exceed the aggregate of 125 % of the Fees payable by Client in the period of twelve (or such lesser period as may have actually elapsed) consecutive months immediately preceding the event giving rise to the claim under the Agreement.
- 11.3 Without prejudice to the generality of clause 11.2, in no event shall OML be liable to Client for any indirect or consequential loss or damage, or for any (i) pure economic loss (ii) losses incurred by any customer of Client or other third party (iii) loss of profits (whether categorised as direct or indirect) (iv) losses arising from business interruption (v) loss of business revenue, goodwill or anticipated savings (vi) losses whether or not occurring in the normal course of business, wasted management or staff time, or (vii) loss or corruption of data. Client acknowledges that OML is not in a position to assess such loss which

Client may suffer as a result of any failure to provide the Services, or any other default on the part of OML and it would be impractical and uneconomic for OML to insure against such liability.

- 11.4 The parties expressly agree that should any limitation or provision contained in this clause 11 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if OML thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 11.5 OML's liability to Client for direct loss or damage to tangible property suffered by the Client as a result of this Agreement will in no event exceed the sum of £1,000,000 in respect of each event or series of related events giving rise to such liability.
- 11.6 11.7 Service Levels shall not apply where a Fault results from (i) a Force Majeure event and/or is the result of neglect, accidental, wilful or malicious damage; (ii) any virus attacks unless foreseeable, (iii) a data restore; (iv) any malfunction of software other than as provided and installed by OML or; (vi) the acts or omissions of any third party contractor such as an internet service provider.

12. Non-Solicitation

- 12.1 During the term of this Agreement and for a period of six (6) months after termination howsoever arising either party will not directly or indirectly and whether on its own behalf or on behalf of any person, firm, partnership or company, solicit or offer employment or engagement to or employ or engage any person who is at any time during the term of this Agreement a director or senior executive of or a consultant to either party, or any employee or other party with whom either party, their employees or agents have had dealings. Nothing in this clause shall restrict the parties' activities in relation to general recruitment advertising.
- 12.2 If either party is prepared to waive Clause 12.1 on any occasion (which it shall be under no obligation to do), it shall be entitled to charge an introduction fee being 50% of the relevant individual's salary package. Any waiver must be in writing signed by the duly authorised representative of a party.

13. Change Control

- 13.1 Either party may propose a Change by submitting a written request to the other of the proposed Change, including details of the Change size and a proposed timetable for implementation. Any change proposed by OML shall also contain details of any alteration to Fees.
- 13.2 Where Client submits such a written request, OML shall respond giving details of the Change together with any consequent alteration to Fees or technical specifications and a proposed timetable for implementation.
- 13.3 Within 30 days of receiving OML's request under clause 13.1 or OML's response under clause 13.2, the Client shall give OML a written response either accepting or rejecting the Change.
- 13.4 If Client rejects the Change, the parties shall escalate the matter for resolution between their respective senior directors and if the matter cannot be resolved between the parties within 14 days

thereafter either Client or OML shall be entitled to terminate this Agreement without liability on 14 days notice, save that OML shall be entitled to be paid all its Fees due at the date of termination together with any time and materials costs of all Support and/or other Services provided by OML up until the date of termination.

- 13.5 Any variation or amendment to this Agreement or to the Services (other than a Change subject to the foregoing) shall only be effective if made in writing and signed by a director of OML and countersigned by the Client Representative.

14. Assignment and Subcontracting

- 14.1 This Agreement is personal to Client and Client shall not be entitled to assign, delegate, or sub-contract its rights or obligations hereunder to any other person without the prior written consent of the other party. OML shall be entitled to sub-contract any of its rights and obligations under this Agreement.

15. Notices

- 15.1 Any notice under this Agreement will be in writing and deemed to be sufficiently served if it is either delivered personally or sent by prepaid registered post, or by fax, or by email (requesting acknowledgement) and addressed to the party with the details as set out in the Order Form.
- 15.2 Notice given by personal delivery will be deemed to have been served on the date of delivery unless delivered on the Saturday, Sunday or public holiday in which case delivery will be the following first business day.

16. Waiver

- 16.1 No failure or delay on the part of either party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

17. Severability

- 17.1 In the event that any of these terms, conditions or provisions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition, or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

18. Data Protection

- 18.1 Each party shall comply with its obligations under the Data Protection Act 1998 and Client warrants that any personal data it makes available to OML so complies and that Client has obtained all necessary

consents from its individual employees and contractors in relation to the processing of their personal data in relation to their individual training needs.

19. Relationship

- 19.1 Neither party is the employee, employer agent, partner or representative of the other. Nothing contained in this Agreement shall be construed as constituting or establishing a partnership or joint venture.

20. Contracts (Rights of Third Parties) Act 1999

- 20.1 This Agreement does not create any rights in any other entities that are not party to this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.

21. Headings and provisions

- 21.1 The headings in this Agreement are for convenience only and are not part of this Agreement. In the event of any conflict between the various parts of this Agreement and any provisions therein, the following order of precedence shall apply to the extent of any conflict. (i) Part 1 - The Order Form (ii) Part 2 – Special Conditions and Service Descriptions (iii) Part 3 - General Terms and Conditions.

22. Entire Agreement

- 22.1 This Agreement constitutes the entire understanding between the parties relating to its subject matter and supersedes all prior representations, writing, negotiations, or understandings with respect hereto. No party has relied upon any representation or warranty except as expressly set out in this Agreement. Each party unconditionally waives any right it may have to either (i) claim damages against the other or (ii) rescind the Agreement, on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Agreement (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 22.2 Each party shall execute such documentation and do such things reasonably requested by the other party to ensure that the terms of this Agreement are fully effective.

23. Governing Law

- 23.1 This Agreement shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English courts. References to any statute or any section of any statute include any statutory amendment, modification or re-enactment for the time being in force and references to any statute include any statutory instrument or regulation made under it.

Annex 1**Pro Forma Change Order****CHANGE ORDER NO.****TO****WORK ORDER NO.**

This Change Order ("CO") is dated the _____ day of _____, 20____, and is attached to and made a part of the Terms and Conditions Agreement dated _____, 20____ by The Other Media Limited a company incorporated in England and Wales with company number 03468671, and having its registered office at 1 Newham's Row, London, SE1 3UZ ("OML"), and _____, a company incorporated in England and Wales with company number _____ and having its registered office at _____, ("Client").

1 This CO modifies, amends, changes and/or supplements Work Order No. _____, dated _____, 20____, [which has been previously modified by WO/CO Nos. _____, _____ and _____], as follows

2 Change Description

Project Objectives Changes

Project Scope Changes

Project Approach Changes

Project Deliverables Changes

3 Impact Analysis

Qualitative Impact

Schedule Impact

Budget Impact

Staffing Impact

Professional Fees

4 Updated Risks and Assumptions

Revised Risks

Revised Assumptions

Work Order No._____, as amended by the previously issued CO Nos._____,_____and_____, is in full force and effect, except as otherwise modified, amended or supplemented by this CO.

Agreed and Accepted:

The Other Media Limited

Name:_____

Name: _____

Title:_____

Title: _____

Signature:_____

Signature: _____