

THE SOFTWARE BUREAU LIMITED TERMS OF BUSINESS

1. Interpretation

1.1 In these Terms:

“Acceptance”	means the acceptance or deemed acceptance of the Output Material by the Client pursuant to Clause 3;
“Acceptance Tests”	means the testing of the Output Material by the Client to determine whether it complies with the specification for the Output Material.
“Charges”	means the fees payable by the Client for the Services as set out on the Specification Sheet;
“Client”	means the person named on the Client Instructions for whom The Software Bureau has agreed to provide the Services in accordance with these Terms;
“Client Instructions”	means the brief on which instructions are given to The Software Bureau from the client;
“Document”	includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form;
“Input Material”	means any Documents or other materials, and any data or other information provided by the Client relating to the Services;
“Output Material”	means any data (on magnetic media or otherwise) and any Documents or other materials provided by The Software Bureau, including, but not limited to, Input Material which has been cleaned and processed by The Software Bureau, relating to the Services;
“Services”	means any services to be provided by The Software Bureau for the Client and referred to in the Client Instructions;
“Test Period”	means the period of 30 days from provision of data or as set out in the Client Instructions that the Client has to carry out Acceptance Tests.
“The Software Bureau”	means The Software Bureau Limited (registered in England and Wales under number 2826490) whose registered office is at 5 White Oak Square, London Road, Swanley, BR8 7AG its employees, agents or sub-contractors;

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Supply of the Services

2.1 The Software Bureau shall provide the Services to the Client in accordance with the Contract. Any changes or additions to the Contract must be agreed in writing by The Software Bureau and the Client.

2.2 The Client shall at its own expense supply The Software Bureau with all necessary Input Material relating to the Services, within sufficient time to enable The Software Bureau to provide the Services in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.

2.3 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Software Bureau shall have no liability for any such loss or damage, however caused.

2.4 The Software Bureau may at any time without notifying the Client make any changes to the Services which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Services.

3. Acceptance Tests

3.1 The Client shall carry out Acceptance Tests during the Test Period. If the Client fails to carry out Acceptance Tests during the Test Period the Client shall be deemed to have accepted the Output Material.

3.2 In the event that any Acceptance Tests are not passed, the failures which cause the relevant tests to be failed (“Defects”) shall be drawn up and documented by the Client and presented to The Software Bureau for discussion as to how best to rectify such Defects.

3.3 If any failure results from a Default which is caused by an act or omission of the Client or their sub-contractors or agents for which The Software Bureau shall have no responsibility (“Non-The Software Bureau Defects”), the Output Material shall be deemed to have passed to Acceptance Tests notwithstanding such Non-The Software Bureau Defect. Any work attributable to Non-The Software Bureau Defects shall be charged at The Software Bureau’s then current rates.

3.4 The Software Bureau shall remedy Defects as soon as reasonably practicable so as to ensure that the Output Material passes the Acceptance Tests on a retest.

3.5 Once Acceptance has taken place, any further modification to the Output Material shall be charged at The Software Bureau’s then current rates.

4. Charges

4.1 Subject to any special terms agreed, the Client shall pay the Charges together with any additional sums which, in The Software Bureau’s sole discretion, are required as a result of the Client’s Instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

4.2 All charges quoted to the Client for the provision of the Services are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

4.3 The Software Bureau shall be entitled to invoice the Client on completion of the Services, or at other times agreed with the Client. For avoidance of doubt, if the provision of Output Material is part of the Services, the Services will be completed on Acceptance.

4.4 The Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of The Software Bureau’s invoice unless otherwise agreed in writing between The Software Bureau and the Client.

4.5 If payment is not made on the due date, The Software Bureau shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4% above the base rate from time to time of NatWest Bank plc from the due date until the outstanding amount is paid in full.

5. Client Warranties

5.1 The Client warrants that any Input Material and any provision of the Services by The Software Bureau that arises directly from the instructions of the Client:

5.1.1 will not infringe the copyright or other rights of any third party or render The Software Bureau liable to any proceedings whatsoever,

- 5.1.2 is legal and decent and complies with the British Code of Advertising, Sales Promotion and Direct Marketing, the Direct Marketing Code of Practice and all other relevant codes under the general supervision of the Advertising Standards Authority or the Direct Marketing Association; and
 - 5.1.3 complies with the requirements of the Data Protection Act 1998 and all other relevant legislation (including subordinate legislation, the rules of statutory recognised authorities and the law of the European Economic Community) for the time being in force or applicable in the United Kingdom.
- 5.2 The Software Bureau reserves the right to cease providing the Services if it believes that the warranties in 5.1 above have been breached or will be breached by the continued performance of the Services. The Software Bureau shall be entitled to charge the Client for any work carried out before it ceased to provide the Services.

6. Rights in Input and Output Material

- 6.1 The property and any copyright or other intellectual property rights in:
- 6.1.1 any Input Material shall belong to the Client;
 - 6.1.2 any Output Material shall, unless otherwise agreed in writing between The Software Bureau and the Client, belong to The Software Bureau, subject only to the right of the Client to use the Output Material for the purposes of utilising the Services.
- 6.2 Any copyright or other intellectual property rights that subsist or may subsist in any software used by The Software Bureau for the provision of the Services, together with any copyright or other intellectual property in any reports or other materials used by The Software Bureau for the provision of the Services, shall remain the property of The Software Bureau at all times.
- 6.3 The Software Bureau reserves the right to make copies of any data or other Input Material for the purposes of computer back up only. The Software Bureau's data storage policy allows for any data comprised in Input or Output Material to be held on The Software Bureau's computer systems for a period of a one month from the date of Acceptance. Thereafter, in compliance with data protection principles, The Software Bureau will remove all such data to back up media which will be destroyed securely three months from the date of Acceptance.

7. Warranties and Liability

- 7.1 The Software Bureau warrants to the Client that the Services will be provided using reasonable care and skill and, as far as reasonably possible, within the times referred to in the Client Instructions.
- 7.2 The Software Bureau shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.
- 7.3 Except in respect of death or personal injury caused by The Software Bureau's negligence, or as expressly provided in these Terms, The Software Bureau shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of The Software Bureau, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client, and the entire liability of The Software Bureau under or in connection with the Contract shall not exceed the amount of The Software Bureau's charges for the provision of the Services, except as expressly provided in these Terms.

8. Force Majeure

- 8.1 The Software Bureau shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of The Software Bureau's obligations in relation to the Services, if the delay or failure was due to any cause beyond The Software Bureau's reasonable control.
- 8.2 Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:
- 8.2.1 act of God, explosion, flood, tempest, fire or accident;
 - 8.2.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 8.2.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 8.2.4 import or export regulations or embargoes;
 - 8.2.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees or either The Software Bureau or the Client or of a third party);
 - 8.2.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 8.2.7 power failure or breakdown in machinery.

9. Indemnity

- 9.1 The Client will indemnify The Software Bureau and agrees to keep it indemnified against all claims, costs, proceeding, demands, losses, damages, expenses or liability whatsoever arising directly or reasonably foreseeably as a result of any breach or non-performance of any of the representations, warranties or other terms contained in these Terms or implied by law.

10. Termination

- 10.1 The Software Bureau may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the Client if:
- 10.1.1 the Client commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so; or
 - 10.1.2 the Client goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

11. General

- 11.1 These Terms together with the terms, if any, set out in the Client Instructions constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 11.2 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

- 11.3 The Software Bureau may assign or transfer any of its rights or sub-contract any of its obligations under the Contract to any third party. The Client may not assign or transfer any of its rights or sub-contract any of its obligations under the Contract except with the specific permission in writing of The Software Bureau.
- 11.4 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.5 If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- 11.6 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.