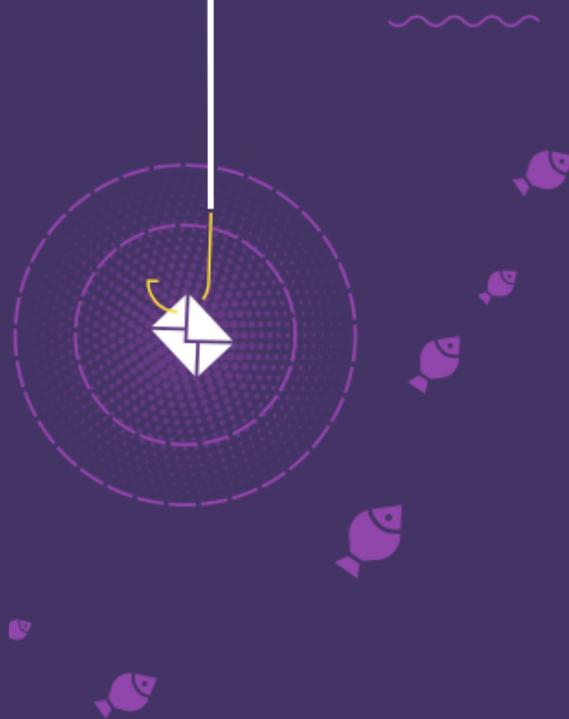




# Terms & Conditions

July 2019

[www.purplephish.com](http://www.purplephish.com)



This is a legal agreement (“**Agreement**”) between you (the natural person or legal entity that is agreeing to be bound by this Agreement) (“**the Customer**”) and Purplephish Limited, a company registered in England and Wales under Company Number: 10632392, whose registered office is at 3 Hardman Square, Spinningfields, Manchester, England (“**Purplephish**”). BY ACCESSING OR OTHERWISE USING THE SERVICES, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT ACCESS OR USE THE SERVICES.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1. **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2. **Charges:** the charges payable by the Customer for the supply of the Services in accordance with Clause 5 (Charges and payment).
- 1.3. **Commencement Date:** has the meaning given in Clause 2.2.
- 1.4. **Confidential Information:** information or materials provided by one party (“Discloser”) to the other party (“Recipient”) which are in tangible form and labelled “confidential” or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (i) software license keys; (ii) information regarding Purplephish’s pricing, product roadmaps or strategic marketing plans; and (iii) non-public materials relating to the Services. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser’s Information.
- 1.5. **Contract:** the contract between Purplephish and the Customer for the supply of Services in accordance with these Conditions.
- 1.6. **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
- 1.7. **Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.
- 1.8. **Customer:** the person or firm who purchases Services from Purplephish.
- 1.9. **Customer Default:** has the meaning set out in Clause 4.2.
- 1.10. **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);
- 1.11. **Deliverables:** the deliverables set out in the Order produced by Purplephish for the Customer.
- 1.12. **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, 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.

- 1.13. **Order:** the Customer's order for Services as set out in the Customer's purchase order form or the Customer's written acceptance of a quotation by Purplephish as the case may be.
- 1.14. **Services:** the services, including the Deliverables, supplied by Purplephish to the Customer as set out in the Specification.
- 1.15. **Specification:** the description or specification of the Services provided by Purplephish to the Customer.
- 1.16. **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.

## 2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when Purplephish issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (Commencement Date).
- 2.3. Any samples, descriptive matter or advertising issued by Purplephish, and any descriptions or illustrations contained in Purplephish's website or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any quotation given by Purplephish shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.

## 3. SUPPLY OF SERVICES

- 3.1. Purplephish shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. Purplephish shall use all reasonable endeavours to meet any performance dates specified, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. Purplephish reserves the right to amend the Specification if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Purplephish shall notify the Customer in any such event.
- 3.4. Purplephish warrants to the Customer that the Services will be provided using reasonable care and skill. Purplephish shall use reasonable efforts to ensure the Services are provided without any interruptions and that any information provided by Purplephish as part of such Services is accurate and up to date. However, the Customer may experience disruptions or receive inaccurate information due to circumstances beyond Purplephish's control for which, subject to Clause 9, Purplephish shall not be liable. Purplephish (and its suppliers) may also need to perform maintenance of its own hardware and software, which may

interrupt the Services. However, Purplephish will endeavour to execute such essential maintenance with the minimum of disruption to the Services.

#### **4. CUSTOMER'S OBLIGATIONS**

- 4.1. The Customer shall:
  - a. ensure that the terms of the Order are complete and accurate;
  - b. co-operate with Purplephish in all matters relating to the Services;
  - c. provide Purplephish with such information and materials as Purplephish may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - d. to ensure that its access credentials for the Services are stored securely and only used by authorised employees and are not shared with any other person. The Customer shall take all reasonable steps to prevent any unauthorised access to the Services and will immediately notify Purplephish if it becomes aware of any such access; and
  - e. to use the Services for lawful purposes only and in accordance with all applicable laws and having ensured that the Customer has all necessary consents, authorisations or permissions comply with all applicable laws.
- 4.2. If Purplephish's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
  - a. without limiting or affecting any other right or remedy available to it, Purplephish shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Purplephish's performance of any of its obligations;
  - b. Purplephish shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Purplephish's failure or delay to perform any of its obligations as set out in this Clause 4.2; and
  - c. the Customer shall reimburse Purplephish on written demand for any costs or losses sustained or incurred by Purplephish arising directly or indirectly from the Customer Default.

#### **5. CHARGES AND PAYMENT**

- 5.1. The Charges for the initial term will be as set out in Purplephish's quotation. The Charges for the second and any subsequent term of Services will be notified to the Customer in writing not less than 30 days prior to commencement of the relevant term.
- 5.2. The Customer shall pay each invoice submitted by Purplephish within 30 days of the date of the invoice and in full and in cleared funds to a bank account nominated in writing by Purplephish. Time for payment shall be of the essence of the Contract.
- 5.3. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Purplephish to the Customer, the Customer shall, on receipt of a valid VAT invoice from Purplephish, pay to Purplephish such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 5.4. If the Customer fails to make a payment due to Purplephish under the Contract by the due date, then, without limiting Purplephish's remedies under Clause 9, 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 Clause 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%.
- 5.5. All amounts due under the Contract 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).
- 5.6. The Services cannot be cancelled or rescheduled once the licence has been activated. Other than where terminated by Purplephish pursuant to Clause 9, the parties agree that any Charges paid or payable in relation to the Services are non-refundable. Accordingly if the Contract is terminated or the Services are otherwise cancelled no refunds or credits will be given.
- 5.7. The Term shall automatically be extended on the anniversary of the Commencement Date for an equivalent term and on each subsequent anniversary if the Commencement Date thereafter, unless in any such case the customer provides Purplephish at least 90 days before such anniversary of the Commencement Date, written notice of its intent not to renew or extend the Term.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Purplephish.
- 6.2. Purplephish grants to 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 the Contract to copy and use the Deliverables for its own internal purposes only.
- 6.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 6.2.
- 6.4. The Customer grants Purplephish a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Purplephish for the term of the Contract for the purpose of providing the Services to the Customer.

## **7. CONFIDENTIALITY AND DATA PROTECTION**

- 7.1. Recipient may use the Confidential Information of Discloser; (i) to exercise its rights and perform its obligations under the Contract or (ii) in connection with the parties' on-going business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by the Contract and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of the Contract and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder.
- 7.2. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care. Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law, regulation, the rules of any stock exchange or by the order of a court of similar judicial or administrative

body, provided that, where legally permitted, Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

- 7.3. Nothing in the Contract will prevent or restrict Purplephish from providing services the same as or similar to the Services to other clients or using or sharing for any purpose any knowledge, experience or skills gained during or arising from the performance of the Services, subject to the obligations of confidence set out in Clause 7.1.
- 7.4. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Purplephish is the processor.
- 7.5. The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Purplephish for the duration and purposes of the Contract.
- 7.6. Purplephish shall use the Personal Data only for the purposes of fulfilling its obligations under the Contract and shall:
  - a. ensure that it has in place appropriate technical and organisational measures necessary to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - b. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - c. not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - i. the Customer or Purplephish has provided appropriate safeguards in relation to the transfer;
    - ii. the data subject has enforceable rights and effective legal remedies;
    - iii. Purplephish complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - iv. Purplephish complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - d. Notify the Customer without undue delay on becoming aware of a data breach;
  - e. At the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by applicable law to store the personal data; and
  - f. Maintain complete and accurate records and information to demonstrate its compliance with this Clause 7 and allow for audits by the Customer or its designated auditor and immediately inform the Customer if, in the opinion of Purplephish, an instruction infringes the Data Protection Legislation.
- 7.7. The Customer accepts and acknowledges that, in order to deliver the Services effectively and/or to meet the requirements of the Contract, Purplephish may, from time to time, need to transfer Personal Data to a third country or international organisation. Unless it has informed Purplephish otherwise in writing, the Customer therefore confirms that it consents to such transfer and that this clause constitutes written instructions from the Customer for the purposes of Clause 7.6(c).
- 7.8. The Customer consents to Purplephish appointing Salesforce as a third party processor of Personal Data under the Contract. Purplephish confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement substantially on

that third party's standard terms of business.

- 7.9. Either party may, at any time on not less than 30 days' notice, revise this Clause 7 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 the Contract).

## 8. LIMITATION OF LIABILITY

- 8.1. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- death or personal injury caused by Purplephish's (or its employees', agents' or sub-contractors') negligence;
  - fraud or fraudulent misrepresentation; or
  - any other liability that cannot be limited or excluded at law.
- 8.2. Subject to Clause 8.2, Purplephish's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence and also including under any indemnity, shall be limited to an amount equal to the Charges paid under the Contract in the twelve months immediately preceding any claim.
- 8.3. Subject to Clause 8.2, Purplephish shall not be liable to the Customer for any:
- indirect, consequential and/or special loss or damage;
  - loss of profit and/or revenue (direct or indirect); or
  - costs of recovering or reconstituting data, arising out of or in connection with the Contract and/or the provision of the Services, whether in contract, tort, misrepresentation, under statute or otherwise, howsoever caused including by negligence.
- 8.4. Subject to Clause 8.2, Purplephish shall not be liable for any loss, claims, demands, actions, costs, expenses or liabilities arising from or in connection with any materials and/or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible or defective in any other way including failure to deliver or delay in delivering the Services or any other breach of the Contract by Purplephish.
- 8.5. This Clause 8 shall survive termination of the Contract.

## 9. TERMINATION

- 9.1. Without affecting any other right or remedy available to it, Purplephish may terminate the Contract by giving the Customer 1 months' written notice.
- 9.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
  - the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business
  - the other party suspends, or threatens to suspend, or ceases or threatens to cease to

- carry on all or a substantial part of its business; or
  - d. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3. Without affecting any other right or remedy available to it, Purplephish may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4. Without affecting any other right or remedy available to it, Purplephish may suspend the supply of Services under the Contract or any other contract between the Customer and Purplephish if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 9.2(b) to Clause 9.2(d), or Purplephish reasonably believes that the Customer is about to become subject to any of them.

## 10. CONSEQUENCES OF TERMINATION

- 10.1. On termination of the Contract:
- a. the Customer shall immediately pay to Purplephish all of Purplephish's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Purplephish shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - b. the Customer shall return all of Purplephish materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Purplephish may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
  - c. Termination or expiry of the Contract 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 Contract which existed at or before the date of termination or expiry.
  - d. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 11. GENERAL

- 11.1. Force Majeure Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2. Assignment Except to the extent transfer may not legally be restricted, the Customer may not assign the Contract, any Order, or any right or obligation herein or delegate any performance without Purplephish's prior written consent. Any other attempted assignment or transfer will be void.
- 11.3. Variation Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.4. Waiver No failure or delay to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise

- of such right shall preclude or restrict the further exercise of that or any other right or remedy.
- 11.5. Severance If any provision of this Agreement is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.
  - 11.6. Notices Any notice sent under the Contract shall be in writing addressed to the other party at its registered office (or its principal place of business or such other address as may be notified by one party to the other from time to time).
  - 11.7. Third Party Rights Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - 11.8. Governing Law The Contract, 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.
  - 11.9. Jurisdiction 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 the Contract or its subject matter or formation