

1. Interpretation

In these Terms and Conditions unless the context otherwise requires.

1.1 The following words and expressions shall have the following meanings:

“Conditions” - these Terms and Conditions.

“Company” - Viccari Wheele Limited trading as Refernet.

“Company’s Website” - www.refernet.co.uk or such other substituted website from time to time designated by the Company and notified to the Client.

“Client” - the party with whom the Company has contracted to supply the Service.

“System Administrator” - the person who is appointed by the Client to control the Service.

“Contract” - the agreement between the Company and the Client for the supply of the Service which shall be deemed to incorporate these Conditions except as specifically varied by the said agreement.

“Contract Date” - the date specified as such in the Contract but otherwise the date on which the Contract is made.

“Catchment Area” - the area specified in the Contract as such.

“Refernet Service” - the Company’s online hosted referral service as described in the Company’s Website on the date of the Contract as varied from time to time in accordance with the Contract.

“Refernet Software” – The Company’s software installed by the Company on the Service Website to provide the Service as varied from time to time as provided in the Contract.

“Service” - the Service to be provided to the Client under the Contract and (where the context admits) any Additional Services (defined below).

“Trial Mode” - such variant of the Refernet Service as the Company may from time to time determine will be sufficient to enable a Client to trial the Refernet Service.

“Additional Services” - any services (including consultancy services) or facilities not incorporated in the Service which are requested by the Client or agreed by the Company and the Client or any additional work carried out by the Company as a result of the breach or non observance of the Contract by the Client or a User.

“Citizen” - a member of the public for (or in respect of whom) a User seeks advice or information from another User.

“User” - a party (eg an agency) authorised or permitted by the System Administrator to send and receive Referrals through the Service. The Client will be a User when it uses the Service to make Referrals

“Referral” - a request for information or advice required for (or relating to) a Citizen by one User to another User and the supply of information or advice in response to such request

“Excluded User” – any party specified as such or not authorised to use the Service by the Contract

“Upgrade” - any improvement or addition to the Service notified by the Company to the Client as such.

“Target Date” - the date specified as such in the Contract but otherwise 10 Business Days from the Contract Date.

“Ready for use” - when the Service Website has been set up and is capable of supplying a fully operational Service.

“Start Date” - the date on which the Service is ready for use.

“Year” - any consecutive period of twelve months

commencing with the Start Date or any anniversary of same and “Month” – any period commencing with the same day in any calendar month as the Start Date and ending on the day before said same day in the next calendar month.

“Term” - the period (“the Initial Period”) for the supply of the Service which will commence on the Start Date and will be either the period specified in the Contract as the Term or otherwise a period of three years from the Start Date which Initial Period will then continue during each Year following unless and until ended by either the Company or the Client giving the other at least twelve weeks written notice before the beginning of such following Year.

“LOGIN” - a user name and/or password (and any replacements) required to access the Service supplied initially by the Company to the Client or (where the context allows) subsequently changed by the Client or supplied to any User by the Client.

“Service Instructions” – any instructions or other information relating to the Service issued by the Company from time to time or available on the Company’s Website from time to time.

“Setting Up Instructions” - the instructions and information required to complete the Company’s Setting Up Instructions Form as available on the Company’s Website.

“Service Website” - the website to be set up by and hosted by the Company for the Client to enable the Client to use the Service.

“Service Data” - any data (including Personal Data) information or documents put into the Service by the Client or a User.

“List Prices” - the Company’s standard prices for the Refernet Service from time to time in force and displayed on the Company’s Website from time to time.

“Business Day” - any day except Saturday or Sunday or a statutory or public holiday in any part of England and (if outside England) the Catchment Area.

“Business Hours” - between 9.00am and 5.00pm on Business Days.

“Intellectual Property Rights” - any rights conferred anywhere in the world in respect of patents, copyright, designs, trade marks or names, database rights and all other rights which may subsist anywhere in the world in respect of confidential information and inventions including rights to apply for any of the foregoing.

“GDPR” – The General Data Protection Regulation 2018 and words and definitions defined in GDPR shall have the same meanings in these Conditions.

“Data Protection Laws” – all laws and regulations relating to the protection of data (including GDPR) from time to time in force in the United Kingdom.

“Force Majeure” – defined in Condition 9.4

1.2 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include any other and “person” or “party” means and includes any person or legal entity corporate or incorporate.

2. Target Date & Start Date

2.1 The Client shall as soon as reasonably practicable and in any event within five Business Days from the Contract Date give the Company the Setting Up Instructions relating to the Service.

2.2 The Company shall endeavour to have the Service ready for use by the Target Date.

2.3 The Start Date is the date on which the Service is ready for use.

3. Training/Help

3.1 The Company will provide the Client without charge with training in the form of an online screen share training session or such other training the Company

shall consider appropriate. Any other training will be deemed Additional Services.

3.2 The Company will provide the Client with such online support for technical problems it considers reasonable and a telephone service for reasonable use by the Client to resolve Faults (as defined in Condition 4.3) in each case during Business Hours.

4. The Service

4.1 The Company shall provide the Service by setting up and hosting a website running the Refernet Software and supplying a LOGIN to the Client to enable the Client to gain and control access to the Service.

4.2 Subject to the Conditions, the Service will be available to the Client at all times.

4.3 In the event of any failure or malfunction of the Service except one resulting from any breach of obligation by the Client or Force Majeure (“Fault”) the Company shall use reasonable endeavours (having regard to the nature of the Fault and its resources) to rectify the Fault within 24 Business Hours of same being reported to it by the Client and the obligations of the Company under this Condition shall be the sole and exclusive remedy of the Client in the event of a Fault.

4.4 The Company may suspend the Service to incorporate Updates, to carry out repairs and maintenance to its equipment, systems and services and to the Service Website (“Works”) The Company where practicable shall give the Client at least three Business Hours notice of its intention to carry out Works.

5. Data Control, Processing and Protection

5.1 The Client is the Data Controller in relation to any Personal Data put into the Service by the Client or any User and also any Personal Data received from the Service by the Client or any User and undertakes with the Company to comply with and ensure compliance by all Agencies and Users with GDPR as regards all such Personal Data in particular but not limited to the security, use and retention of same.

5.2 The Company (in order to put in place proper arrangements for the processing of Personal Data) undertakes with the Company in relation to any Personal Data put into the Service for which it is the Data Processor for the Client to comply with the obligations of a Data Processor under GDPR in particular but not limited to:

- (a) appropriate security as regards the integrity, holding and transfer of data.
- (b) appropriate assistance and supply of information to the Client in relation to the Client’s obligations under GDPR as regards to individuals exercising their rights under GDPR or the Client’s obligations to the ICO or as the Client may reasonably require for audit purposes or verification of compliance.
- (c) the return or destruction of data.
- (d) notification of breaches of which it is aware.

5.3 The Client acknowledges that the Client controls and is responsible for all Personal Data put into the Service and the use of such Personal Data and that the Company in providing the Service does not access or use any Personal Data and will only access the Service Website (and then without viewing any Personal Data except as specifically authorised by the Client) for the purposes of repairs, maintenance and installing Upgrades and any bespoke facilities agreed with the Client.

5.4 The Company’s Representative for the matters dealt with by this Condition will be displayed on the Company’s Website.

6. Client’s Obligations

The Client shall:

6.1 Supply the Company promptly with such information and assistance the Company may require to set up the Service and from time to time to provide the Service.

6.2 Pay the Company the fees and expenses specified in Condition 7 for providing the Services and any

Additional Services on the dates therein specified (of which time is the essence) and (if requested by the Company) pay the Service Charge by bankers standing order or direct debit.

6.3 Ensure that its computer(s), software and systems and those of any User are at all times suitable (as the Company shall specify) to use the Service and comply with the provisions of the Contract.

6.4 Use the Service in conformity with the Contract and the Service Instructions and procure that all Agencies and Users do likewise.

6.5 Use any LOGIN solely for the purpose of using the Service and does not disclose same to any other person and procure any User does likewise.

6.6 Use and ensure any User uses the Service solely in relation for the provision of services and information by to Citizens in the Catchment Area.

6.7 Ensure that any data, other information or materials supplied by the Client or any User in relation to the use of the Service do not infringe the Intellectual Property Rights or any other rights of any other person or include defamatory or illegal material or any viruses or worms or other harmful elements.

6.8 Procure the consent of any third party required for the use of Service Data by the Service.

7. Fees and Expenses

7.1 The Client shall pay the Company:

(a) for providing the Service:
(i) the Set Up, Customising and Training Fee specified in the Contract or otherwise its List Price in force on the Contract Date which shall be paid as specified in the Contract but otherwise on the Contract Date.
(ii) the Service Charge at the rate specified in the Contract but otherwise its List Price which shall be paid as specified in the Contract but otherwise annually in advance with effect from the Start Date.
(b) for Additional Services such fees and expenses the parties may agree otherwise at the Hourly Rate plus any costs and expenses properly incurred by the Company in relation thereto which shall be paid at the times agreed by the parties or otherwise within 14 days of the Company's Invoice. "Hourly Rate" means £85 per person per hour plus VAT or such other rate displayed on the Company's website at the time the liability for fees and expenses is incurred.

7.2 All payments to be made under the Contract are exclusive of any applicable Value Added Tax (which is payable additionally at the prevailing rate) and which if not paid on the date agreed for payment ("Due Date") shall carry interest at the rate of 10 per cent per annum from the Due Date until actual payment.

7.3 The Company may by giving the Client at least 4 weeks notice in writing increase any of its fees or charges under Condition 7.1(a) (i) or (ii) at any time after the Initial Period provided that the rate of increase shall not exceed five per cent in any Year.

7.4 If the Client or any User uses the Service for Excluded Customers or Residents outside the Catchment Area the Company may without prejudice to any other right or remedy charge the Client such additional fees it considers as reasonable to reflect such usage.

8. Proprietary Rights of the Parties/Confidentiality/ Data Protection:

8.1 All Intellectual Property Rights in the Service including the Refernet Software, any LOGIN, the User Instructions, the content and design of the Service Website (except any business name of the Client) and the name Refernet ("Name") are and shall remain the sole and exclusive property of the Company.

8.2 (For the avoidance of doubt) if the Company develops any new or improved feature or facility for the Service or any variant thereof at the request of the Client all Intellectual Property Rights in same will belong to the Company who may supply same to any other person.

8.3 The Company will use reasonable endeavours in its design of the Service Website to prevent persons who are not authorised by the Client to do so gaining access to Service Data if the Service is used in conformity with the Contract and the Service Instructions PROVIDED THAT the Company shall have no liability for the disclosure of Service Data as a result of any breach of obligation by the Client or any User or as a result of any unlawful activity by any person.

8.4 The Client shall:

(a) keep the Company's Confidential Information secret and confidential and not to disclose it to any other person nor use it except for the due performance of or as strictly permitted by the Contract. "Confidential Information" shall mean any information which is by its nature clearly confidential or proprietary or identified by the Company as such but not information which is or subsequently becomes generally available to the public other than through a breach of contract or negligence of the Client or any person authorised to use the Service by the Client (b) not use the Name or any name which may be confused with the Name for any purpose whatsoever:
(i) during the continuance of the Contract other than on the Service Website or in the Client's promotional literature referring to the fact that the Client has the benefit of the Service in each case on terms first approved in writing by the Company.
(ii) at any time after the termination of the Contract (for whatever reason).
(c) not copy, adapt or decompile the Refernet Software or use same for any unauthorised purpose or attempt to do so or assist any other party to do so.

8.5 The Client agrees:

(a) that the Company shall have no liability for the correctness, accuracy or completeness of any information which may be available to any person through or as a result of the use of the Service.
(b) that the Company is providing the Client with the use of a website which will be operated by the Client and accordingly all Service Data will be deemed held and used by the Client who will be responsible for any use of and the security of same.
(c) to use and procure the Service is used in accordance with all applicable laws and regulations (including Data Protection Laws) and to indemnify the Company accordingly.
(d) to be responsible for and indemnify the Company as regards all costs and expenses incurred by the Company in enforcing any of the terms of the Contract.

9. General

9.1 The Contract may be signed in one or more parts and contains the whole agreement between the parties relating to its subject matter and supersedes all prior representations and agreements relating to same and no variation of it shall be effective unless agreed in writing by duly authorised representatives of both parties.

9.2 The Client shall not assign or subcontract any of its rights or obligations under the Contract without the prior written consent of the Company.

9.3 The Company may assign the Contract or subcontract the provision of the Service or part thereof on terms that the Company will remain fully liable to the Client for any breach of the provisions of this Agreement by any assignee or sub-contractor.

9.4 Neither Company nor Client shall have any liability to the other for any delay in performing or failure to perform its obligations under this Agreement as a result of Force Majeure meaning any of the following causes or circumstances namely, failure of power or telecommunications lines or other services, failure or break- down of plant or equipment, suspension or interference with online access, non performance of suppliers and subcontractors and any other cause or circumstance beyond the reasonable control of the party affected by same.

9.5 All conditions, representations or warranties (whether written or oral, express or implied by statute or otherwise) expressed or implied (by law or otherwise) as to the quality, fitness for purpose of the Service or otherwise as to the nature or efficacy of the Service which are hereby excluded to the maximum extent

permitted by law.

9.6 The liability of the Company in contract or tort (including negligence or breach of statutory duty) except for death or personal injury caused by the Company's negligence in any Year shall be limited to the amount of the annual Service Charge payable for such Year and the Company shall have no such liability to the Client in any event for any loss of business or profits or any special, indirect or consequential loss or damage suffered by the Client or any other party however caused.

9.7 Obligations which are not expressed or intended to remain in force for a particular time shall remain in force without limit in time.

9.8 The Company may from time to time
(a) make such changes to the Service it considers will improve same and
(b) make such changes to these Conditions it considers reasonably necessary to reflect changes to the Service and changes in any laws, regulations and standards in force in the United Kingdom from time to time applicable to the Refernet Service.

10. Termination/Suspension

10.1 The Company may terminate the Contract by immediate notice if the Client fails to make any payment to the Company within 14 days of the Due Date; or commits a material breach of the Contract and (if remediable) on being given written notice of breach fails to take prompt and effective action to remedy the breach; or ceases to carry on business normally; or goes into liquidation receivership or administration or suffers an analogous process.

10.2 The Company may by immediate notice suspend the supply of the Service at any time when the Client is in breach of the provisions of the Contract in which event the Service Charge will continue to be payable during any period of suspension.

10.3 The Client may terminate the Contract if a Major Fault persists for more than 24 Business Hours. A Major Fault is a Fault (as defined in Condition 4.3) which renders the main function of the Service inoperative PROVIDED that the suspension, expiry or termination of the Contract (for whatever reason) shall not affect any rights or liabilities which have accrued prior to suspension or termination nor affect any provisions which are expressed or intended to continue in force following expiry or termination.

11. Notices

All notices and other communications under the Contract shall be in writing in the English language and deemed to be duly given if delivered by messenger during Business Hours or if posted by prepaid certified, recorded or registered mail to the Relevant Address of the recipient or if transmitted by email to the Relevant Email Address of the recipient. The Relevant Address and Email Address of the parties given in the documents constituting the Contract or (for either party) such substituted details as such party shall notify to the other in writing from time to time for this purpose. Notices will be deemed given (as appropriate) if so delivered when delivered, if so posted two Business Days after posting and if so transmitted by email (transmission confirmed) at the expiry of two Business Hours from the time of transmission.

12. Rights of Third Parties

Neither the Contract nor any use of the Service by any third party will confer any rights on any third party and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

13. Law/ Jurisdiction

The Contract shall be governed by and construed in accordance with English Law and each party hereby agrees to submit to the exclusive jurisdiction of the English Courts as regards any claim, dispute or other matter arising under or by reference to the Contract or the Service.