



THE SOLUTIONS ON DEMAND GROUP

# GENERAL TERMS AND CONDITIONS

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### 1. Definitions

In these general terms and conditions ("these Terms"), which shall be deemed to be incorporated into and apply to each Client Agreement (as hereinafter defined), the following terms shall have the following meanings:-

"Charges" means the charges payable by the Client to the Company as specified in the Client Agreement and in these Terms;

"Client" means the client of the Company as detailed in the Client Agreement;

"Client Agreement" means the agreement between the Company and the Client for the provision of Goods and/or Services into which agreement shall be incorporated these Terms;

"Company" means Solutions on Demand Ltd (Registered Number SC315185);

"Goods" means the goods to be provided by the Company to the Client, all as specified in the Client Agreement;

"Services" means the services to be provided by the Company to the Client, all as specified in the Client Agreement.

### 2. The Client Agreement

2.1 These Terms, in conjunction with the Client Agreement, set out the contractual terms on which the Company will provide Goods and/or Services to the Client.

2.2 In the event that a Client Agreement is entered into by the Company and the Client for the provision of Goods and/or Services, such Client Agreement and these Terms will further be subject, as the case may be, to the following specific terms:

- (a) where the Client Agreement involves the sale of Goods or the provision of Services, the terms set out in Annex 1 to these Terms will, together with the specific terms of the Client Agreement, apply ("the Sale Terms");
- (b) where the Client Agreement involves the specific provision of services relating to specific computer hardware support and maintenance services, the terms set out in Annex 2 to these Terms will, together with the specific terms of the Client Agreement, apply ("the Support Terms");
- (c) where the Client Agreement involves the specific provision of design and/or advertising services, the terms set out in Annex 3 to these Terms will, together with the specific terms of the Client Agreement, apply ("the Design and Advertising Terms");
- (d) where the Client Agreement involves the specific provision of managed hosting services], the terms set out in Annex 4 to these Terms will, together with the specific terms of the Client Agreement, apply ("the Hosting Terms"); and
- (e) where the Client Agreement involves all or some combination of the foregoing, as

appropriate each of relevant Annex to these Terms will, together with the specific terms of the Client Agreement, apply.

2.3 These Terms, together with the terms of the Client Agreement and, as appropriate, the Sale Terms, the Support Terms, the Design Terms and the Hosting Terms shall constitute the entire agreement between the Company and the Client.

2.4 By their acceptance of these Terms, the Client acknowledges that they have not relied upon and have no remedy in respect of any statement, representation, warranty or undertaking other than as expressly set out in the Client Agreement and these Terms.

### 3. Variations

3.1 If, at any time after execution of the Client Agreement, the Client wishes to vary the Goods and/or the Services, the Client may give written notice to the Company requesting such variation and the Company will use reasonable endeavours to accommodate any such variation so requested but shall not be liable to the Client in any way if it is unable to do so.

3.2 If the Company agrees to any variation proposed by the Client, such agreement will be subject to agreement of all necessary changes to the Client Agreement terms including, without prejudice to that generality, the Charges.

### 4. Charges

4.1 The Client will pay the Company the Charges in full on the date or dates set out in the Client Agreement or as otherwise specified in these Terms without set off, deduction, counterclaim or withholding of any sum.

4.2 If the Client fails to make any payment due to the Company, whether under the Client Agreement or these Terms, the Company shall be entitled (without prejudice to any other right or remedy available to it) to suspend any further performance of obligations by the Company to the Client in terms of the Client Agreement until receipt of payment in full. For the avoidance of doubt, there shall be no abatement of the Charges during any period of suspension of the Services arising from non-payment by the Client.

4.3 The Company shall be entitled to charge interest on any sum due under the Client Agreement or these Terms which is not paid on the due date for payment (after as well as before judgement) at a rate of 3% per annum above the base lending rate of The Royal Bank of Scotland plc from time to time or, if higher, in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998 or any amendment or re-enactment thereof from the due date for payment until the date of payment in full.

### 5. Limitation of Liability

5.1 The Company shall in no circumstance be liable to the Client for loss of profits, goodwill or any type of special, indirect or consequential loss, including loss or damage suffered by the Client, as a result of an action brought by either the Client or a third party in relation to the Company's performance of its obligations in terms of the Client Agreement.

- 5.2 The Company's entire liability to the Client (if any) in respect of the Client Agreement shall not exceed the amount of the Charges payable by the Client in terms of the Client Agreement.
- 5.3 The Company does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Company or its employees.
- 6. Force Majeure**
- The Company shall not under any circumstances be liable for failure or delay in performing or fulfilling the Client Agreement (or any part thereof) or otherwise failing to implement its obligations to the Client if such failure or delay shall be due to any cause beyond its reasonable control including (but not limited to) fire, flood, strikes, riots, acts of terrorism, delays in transportation, shortage of labour or inability to obtain supplies or power.
- 7. Confidentiality**
- 7.1 Each of the Client and the Company undertakes to the other:-
- 7.1.1 to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of the Client Agreement ("Confidential Information");
- 7.1.2 not, without the prior written consent of the other, to disclose any Confidential Information in whole or in part to any other person save those of its employees, agents and sub-contractors involved in the provision or receipt of the Goods and/or the Services and who need to know the Confidential Information in question; and
- 7.1.3 use the Confidential Information solely in connection with the provision or receipt of the Goods and/or the Services and not for its own benefit or the benefit of any third party.
- 7.2 The provisions of Condition 7.1 above shall not apply to the whole or any part of the Confidential Information to the extent that it already in the other's possession on the date of its disclosure or in the public domain other than as a result of a breach of condition 7.1.
- 8. Personal Data**
- 8.1 The following words and expressions shall have the following meanings:-
- "Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Requests" have the meanings given in the Data Protection Laws.
- "Data Protection Laws" means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR.
- "GDPR" means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the
- protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- "Personal Data" has the meaning given in the Data Protection Laws.
- "Supervisory Authority" has the meaning given in Data Protection Laws.
- 8.2 The Company and the Client acknowledge that where Personal Data may be processed in connection with the provision of the Goods and/or the Services under the Client Agreement, for the purposes of any such processing, the Company will act as the Data Processor and the Client will act as the Data Controller.
- 8.3 The Company shall:-
- 8.3.1 process Personal Data only as necessary in accordance with obligations the Client Agreement, these Terms, any written instructions given by the Client or as is required by the Data Protection Laws;
- 8.3.2 subject to Condition 8.3.1 above only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Client's prior written consent;
- 8.4 The Client shall, in conjunction with the Company and in its own right and in respect of these Terms and the Client Agreement, take all necessary steps and make all necessary preparations to ensure it is compliant with Data Protection Laws and shall:
- 8.4.1 implement appropriate technical and organisational measures including those in accordance with Article 32 of GDPR to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, having regard to the nature of the Personal Data which is to be protected;
- 8.4.2 ensure that it obtains all necessary consents in relation to any Personal Data which it instructs the Company to process; and
- 8.4.3 notify the Company immediately if it receives (i) a Data Subject Access Request (or purported Data Subject Access Request); (ii) any other request, complaint or communication relating to either party's obligations under the Data Protection Laws; or (iii) any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under the Client Agreement.
- 8.5 On the termination of the Client Agreement, the Company shall, on the written instructions of the Client, delete or return to the Client all Personal Data and delete existing copies unless any EU law or regulatory body requires storage of the Personal Data for a legitimate purpose.
- 9. Termination**
- 9.1 The Company may terminate the Client Agreement by written notice to the Client if:-

- 9.1.1 the Client fails to perform their obligations under the Client Agreement or these Terms and does not remedy any such failure within 7 days of a written request from the Company to remedy such failure;
  - 9.1.2 any information provided by the Client to the Company in terms of the Client Agreement or these Terms or otherwise relied upon by the Company proves to be or becomes inaccurate or incorrect, to an extent that (in the Company's reasonable opinion) affects the ability of the Company to provide the Goods and/or the Services to the Client;
  - 9.1.3 the Client, being an individual, makes an arrangement or composition with their creditors or a sequestration petition is presented in respect of the Client; or
  - 9.1.4 the Client, being a limited company, has a resolution to wind up the Client passed or a petition to wind up the Client is passed or a receiver, administrative receiver or an administrator of the whole or any part of the Client's undertaking is appointed.
- 9.2 Termination of the Client Agreement shall not prejudice the rights of the Company which have arisen on or before the date of termination.

**10. Miscellaneous**

- 10.1 No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right, conferred by the Client Agreement or these Terms, on either the Client or the Company shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other further exercise of any such power or right.
- 10.2 If any provision of these Terms shall to any extent be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and each of the provisions of these Terms shall be valid, legal and enforceable to the fullest extent permitted by law.
- 10.3 Any notice given under these Terms by either party must be in writing and be effected by registered/recorded mail postage and shall be deemed to be received 48 hours after the date of posting. Notices shall be sent to the address of the relevant party set out in the Client Agreement or to any other address notified in writing to the other for such purpose from time to time.
- 10.4 These Terms shall be governed by and construed in accordance with Scottish Law and the parties submit to the exclusive jurisdiction of the Scottish courts.

## ANNEX 1

### SALE OF GOODS OR SERVICES

1. **Definitions**
- 1.1 In this Annex 1, the following words and expressions shall, unless the context otherwise requires, have the following meanings:
- “Conditions” means the terms and conditions set out in this Annex 1 to the Terms;
- “Good Industry Practice” means the exercise of such a degree of skill and diligence that would reasonably be expected from an experienced operator engaged in the provision of services similar to the Services;
- “Terms” means the general terms and conditions of the Company of which this Annex 1 forms part.
- 1.2 Words and expressions defined in the Terms shall, unless the context otherwise requires, have the meanings set out in this Annex 1.
2. **The Goods**
- 2.1 The Goods (as detailed in the Client Agreement) shall be supplied by the Company as specified and in accordance with the description of the same set out in the Client Agreement.
- 2.2 The Company may from time to time make changes to the specification of the Goods without notice to the Client which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
3. **Services**
- 3.1 The Services (as detailed in the Client Agreement) shall be provided by the Company to the Client in accordance with Good Industry Practice.
- 3.2 The Company may at any time without notifying the Client make any changes to the Services which are necessary to ensure the Company complies with any applicable statutory requirements or which do not materially affect the nature or quality of the Services.
- 3.3 The Company undertakes to use reasonable endeavours to ensure the Services are delivered in accordance with the provisions of the Client Agreement but does not guarantee to do so and therefore time of performance shall not be of the essence of the Client Agreement and these Terms.
- 3.4 The Company shall not be liable to the Client for any loss or damage whether arising directly or indirectly from the late performance of the Services.
4. **Charges and Payments**
- 4.1 The Charges for the Goods and the Services shall be the price stated in the Client Agreement together with VAT, which shall be payable in addition if applicable.
- 4.2 The Company may at any time before delivery of the Goods or performance of the Services, by giving notice to the Client, increase the Charges to reflect any increase in the cost to the Company which is due to factors beyond the reasonable control of the Company, including (but without limitation) the cost of labour, materials and other manufacturing costs, provided that the Client shall be entitled to terminate
- the Client Agreement within 7 days of any such notice from the Company.
5. **Delivery**
- 5.1 Delivery of the Goods shall be made to the address for the Client stipulated in the Client Agreement or such other address as may be agreed in writing between the Company and the Client.
- 5.2 Any date stated for delivery of the Goods in the Client Agreement shall be indicative only and the Company shall not be liable for any loss or damage whatsoever due to failure by the Company howsoever caused to deliver the Goods (or any part of them) promptly or not at all.
- 5.3 The failure or refusal of the Client to take delivery of the Goods (or any part thereof) shall entitle the Company, without prejudice to any of the Company's other rights, to (1) without notice suspend further deliveries of any Goods and/or (2) store the Goods until actual delivery and charge the Client for the cost of storage and insurance and any other incidental costs and/or (3) sell the Goods at the best price readily obtainable by the Company and (after deducting all storage, insurance and other selling expenses) charge the Client for any shortfall below the Charges for such Goods.
6. **Risk and Property**
- 6.1 The Goods shall be at the Client's risk as from delivery to the Client.
- 6.2 Notwithstanding delivery having been made of the Goods, title to the Goods shall remain with the Company and property in the Goods shall not pass from the Company until the Client shall have paid the Charges in respect of the Goods in full.
7. **Acceptance**
- 7.1 On delivery, in the event that any of the Goods are damaged or there are any shortages, the Client shall notify the Company of the same in writing, providing reasonable detail of the same within 24 hours of delivery and, if the Client fails to comply with these provisions, the Goods shall be deemed to have been delivered in accordance with the Client Agreement and these Conditions.
- 7.2 On receipt of notice in accordance with Condition 7.1, the Company may (at the Company's sole discretion) repair or replace the damaged Goods (or the appropriate part thereof), deliver the missing Goods, or refund the Charges (or the appropriate part thereof) and the Company will have no further liability to the Client.

## ANNEX 2

### SUPPORT

<b>1</b>	<b>Definitions</b>		
1.1	In this Annex 2, the following words and expressions shall, unless the context otherwise requires, have the following meanings:  "Business Hours" means 9am to 5.30pm Monday to Thursday (5.00pm Friday) excluding those public holidays observed by the Company;  "Conditions" means the terms and conditions set out in this Annex 2 to the Terms;  "Equipment" for the purposes of these Conditions means the items of computer hardware specified;  "Excluded Services" means those services referred to in Condition 3 below which do not fall within the Services;  "Good Industry Practice" means the exercise of such a degree of skill and diligence that would reasonably be expected from an experienced operator engaged in the provision of services similar to the Services;  "Premises" means the Client's premises or, if different, the location(s) at which the Equipment is installed and operated specified in the Client Agreement or such other addresses agreed in writing between the parties for this purpose.  "Terms" means the general terms and conditions of the Company of which this Annex 2 forms part.	3.1.5	the use of defective or inappropriate supplies with the Equipment;
		3.1.6	any defect or error in any software used upon or in association with the Equipment;
		3.1.7	any accident or disaster affecting the Equipment including, without limitation, fire, flood, water, wind, lightning, transportation, vandalism or burglary; or
		3.1.8	the Client's failure, inability or refusal to afford the Company's personnel proper access to the Equipment.
		3.2	For the avoidance of doubt the Services shall further not include:
		3.2.1	the relocation or transportation of the Equipment;
		3.2.2	electrical work external to the Equipment;
		3.2.3	services relating to equipment not specified as being comprised in the Equipment; or
		3.2.4	telephone support not expressly included within the Client Agreement or services requested by the Client outwith Business Hours.
1.2	Words and expressions defined in the Terms shall, unless the context otherwise requires, have the meanings set out in this Annex 2.	3.3	The Company shall (but shall not be obliged to) upon request by the Client provide all or any of the Excepted Services but shall be entitled to charge for the same at its then prevailing time and materials charges.
<b>2</b>	<b>Provision of Services</b>	<b>4</b>	<b>The Charges</b>
	The Company shall supply the Services all as detailed in the Client Agreement to the Client in terms of the Client Agreement, these Conditions are the Terms.	4.1	The Charges for the Services shall be as set out in the Client Agreement.
<b>3</b>	<b>Excluded Services</b>	4.2	The Company shall be entitled to vary the Charges by giving 1 month's notice to the Client.
3.1	For the avoidance of doubt, the Services specified in the Client Agreement shall not include the correction of any fault or defect due to:	<b>5</b>	<b>Performance</b>
	3.1.1	5.1	In the performance of the Services, the Company shall:
	3.1.1	5.1.1	effect performance of the Services with reasonable care and skill and in accordance with Good Industry Practice;
	3.1.2	5.1.2	ensure that the Services are provided by appropriately experienced and trained personnel;
	3.1.3	5.1.3	ensure that all of its employees, agents or sub-contractors given access by the Client to the Premises follow all reasonable and lawful directions and regulations of the Client and comply with any security, health and safety or other policies that apply to the Premises; and
	3.1.4	5.1.4	respond to faults during Business Hours within any response period set out in the Client Agreement or as otherwise intimated in writing by the Company provided such faults have been reported by the Client during Business Hours to the Company in

accordance with any procedure intimated in writing by the Company.

- 5.2 No statutory or other warranty, condition, description or representation of any kind whatsoever on the part of the Company including, but without limitation, any warranty as to the merchantability or fitness for any purpose of the goods/materials supplied or the Services, is given or to be implied by the Company, nor is any such warranty, condition, description or representation to be implied from anything said or written in negotiations between the Company and the Client prior to execution of the Client Agreement.

## **6 Client Obligations**

- 6.1 To allow the Company to perform the Services, the Client shall:
- 6.1.1 provide the Company and its employees, agents and sub-contractors with such access to the Premises as the Company shall from time to time reasonably require in order to discharge its obligations hereunder;
  - 6.1.2 make available at the Premises such facilities as the Company shall reasonably require in order to discharge its obligations;
  - 6.1.3 take all reasonable precautions to protect the health and safety of the Company's employees, agents and sub-contractors while on the Site;
  - 6.1.4 make available the Equipment and supply all documentation and other information necessary for the Company to diagnose any fault in the Equipment;
  - 6.1.5 take good care of the Equipment, housing it in suitable premises under suitable conditions and shall follow such instructions on these matters and on operating the Equipment as the Company shall reasonably give from time to time;
  - 6.1.6 ensure that no part of the Equipment is modified without the prior written approval of the Company or is subjected to unusual physical or electrical stress, accident, neglect, misuse or other damage; and
  - 6.1.7 ensure that no attachment, repair, adjustment or transportation of the Equipment is made without the Company's prior written approval (which shall not be unreasonably withheld).
- 6.2 The Client acknowledges that the Company has not been party to the preparation, specification or selection of any software used on the Equipment and that the Client is responsible for ensuring that any such software comprises all specification suited to the Client's intended purposes and that the terms of any licence required to operate such software are satisfactory to it.
- 6.3 The Client undertakes to indemnify and hold harmless the Company against any loss or damage the Company may suffer as a result of any breach by the Client of any provision of this Hardware Support Agreement or caused by the Equipment or its use.

## ANNEX 3

### DESIGN AND ADVERTISING SERVICES

#### 1. Definitions

1.1 In this Annex 2, the following words and expressions shall, unless the context otherwise requires, have the following meanings:-

"Advertisement" means any form of promotional or advertising material of the Client that is, in terms of the Client Agreement, as the case may be (i) to be printed in the Print Publication and/or (ii) to be published or otherwise displayed by electronic means via or as part of or in connection with the Online Publication;

"Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks are open for business in Glasgow;

"Conditions" means the terms and conditions set out in this Annex 3 to the Terms;

"Copy Deadline" means, where applicable, the latest date (as stated in the Client Agreement) by which the Buyer is required to give the Company full instructions and copy in relation to the Advertisement;

"Designs" means any designs, drawings, web pages or other design based deliverables created by the Company pursuant to the Services as specified in the Client Agreement;

"Intellectual Property Rights" means any and all design rights, copyright and other proprietary rights of a similar nature;

"Online Publication" means the website operated by the Company and which is connected with the title of the Print Publication for the online publication of the Advertisement;

"Print Publication" means the magazine known as "The Review" as published by the Company;

"Terms" means the general terms and conditions of the Company of which this Annex 3 forms part.

#### 2. Materials

The Client warrants and represents to the Company that it has obtained for itself and for the Company all necessary consents, approvals and licences for the use of any third party Intellectual Property Rights provided to the Company in connection with the Services and all necessary rights to properly supply and authorise the use of any materials provided by it to the Company and shall not be responsible for any failure to perform any or all of the Services resulting from the failure of the Client to comply with this Condition 2.

#### 3. Intellectual Property Rights

3.1 All Intellectual Property Rights in any Designs shall be owned by the Company and the Company shall grant to the Client a non-transferable, exclusive, perpetual licence to use the Intellectual Property Rights in the Designs for the purposes stated in the Client Agreement only and such licence shall be conditional upon the Client making payment in full of all Charges due for the Services or otherwise.

3.2 If the Client wishes to use the Intellectual Property Rights in any such Designs for any applications and purposes other than as set out in the Client Agreement, then the Client shall make a request in writing to the Company and the Company may, at its own discretion, grant the Client a non-transferable, exclusive, perpetual licence to use the Intellectual Property Rights in the Designs for wider applications and purposes subject to payment by the Client of a fee, the amount of which will be set by the Company.

3.3 The Client acknowledges and agrees that, unless specifically stated in the Client Agreement, copyright in all Designs shall remain with the Company and the Company shall grant to the Client a non-transferable, exclusive, perpetual licence to use the Designs solely for the purposes specified in the Client Agreement only.

3.4 The Client shall be solely responsible for obtaining permission and right to use any third party designs or images that are copyrighted by any such third party and are provided to form part of the items used in the provision of the Services in terms of the Client Agreement.

#### 4. Client Advertising Obligations

4.1 The Client undertakes to the Company that:-

4.1.1 all copy for the Advertisement will be delivered to the Company in an agreed digital format and/or file configuration and, in the case of an Advertisement to be published in a Print Publication, delivered at least 3 Business Days prior to the Copy Deadline;

4.1.2 the publication of the Advertisement by the Company (either in the Print Publication or the Online Publication or both, as the case may be) in the form originally submitted by the Client will not breach any contract with a third party or infringe any copyright, trade mark or other proprietary right of any third party or otherwise be unlawful or render the Company liable to any proceedings, claims, demands, costs or expenses or any other loss whatsoever;

4.1.3 in the case of any Advertisement submitted for publication by the Client which contains the name or pictorial representation, whether photographic or otherwise, of any living person or any material by which any living person may be identified, the Client has obtained the authority of that living person to make use of his or her name, identity, image or representation;

4.1.4 the Advertisement is legal, decent, honest and truthful, and complies with all relevant codes under the general supervision of the Advertising Standards Authority;

4.2 Notwithstanding Condition 4.1 above, the Company shall be entitled at any time to require the Client to amend any artwork, materials and copy for and relating to the Advertisement, or refuse (without



notice) to publish the Advertisement for the purposes of (a) complying with any legal or moral obligations to which the Company and the client are subject or (b) avoiding the infringement of (i) the rights of any third party or (ii) all relevant codes under the general supervision of the Advertising Standards Authority or (iii) any other applicable law.

## **5. Advertising Terms**

- 5.1 The Company reserves the right at its discretion and without notice to the Client (a) to decline to publish any Advertisement and (b) to destroy all artwork, film, copy or other materials submitted by the Client and which have been in the Company's possession for more than six (6) months from the date of their last use by Company, unless specific written instructions have been received from the Client to the contrary.
- 5.2 If the Advertisement links to another website, the Client shall be responsible for maintaining the link and for the content of the linked-to website.
- 5.3 The Company may remove any Advertisement which contains content or links to a website which, in the Company's opinion, is (or is likely to be) defamatory or objectionable or otherwise likely to bring the Company into disrepute and the Client agrees to indemnify the Company from and against any claims or liability suffered or incurred by the Company arising from or in any connection from links contained in an Advertisement.
- 5.4 With regard to the actual or intended insertion of an Advertisement in any Print Publication or Online Publication, the Company shall not be responsible to the Client or liable for (a) checking the correctness of the Advertisement in the form it is received from the Client or (b) any error in the Advertisement in the form it is received from the Client.
- 5.5 If an Advertisement contains an error caused by the Company and this detracts materially from the Advertisement, then provided the Client gives written notice to the Company of the error in the Advertisement within 5 Working Days of its publication, the Company will at its discretion either (a) give the Client credit for the cost of the Advertisement containing the error or (b) publish the Advertisement duly corrected for a second time without charge to the Client.

## **6. Indemnity**

The Client will indemnify the Company in full against all losses, liabilities, payments, damages, claims or other costs, fines, penalties or expenses which the Company may suffer as a result of the Client breaching its obligations in terms of these Conditions including, without prejudice to that generality, the terms of Condition 3.4.

## ANNEX 4

### MANAGED HOSTING

<b>1</b>	<b>Definitions</b>		Company will be the sole arbiter as to what constitutes a violation of this provision.
1.1	In this Annex 4 the following words and expressions shall, unless the context otherwise requires, have the following meanings:  "Conditions" means the terms and conditions set out in this Annex 4 to the Terms;  "Good Industry Practice" means the exercise of such a degree of skill and diligence that would reasonably be expected from an experienced operator engaged in the provision of services similar to the Services;  "Network" means the Client's connection to the internet as provided by the Company or a Company third party supplier;  "Terms" means the general terms and conditions of the Company of which this Annex 4 forms part;		
1.2	Words and expressions defined in the Terms shall, unless the context otherwise requires, have the meanings set out in this Annex 4.		
<b>2.</b>	<b>Services &amp; Charges</b>		
2.1	The Company shall supply the Services as detailed in the Client Agreement and any attached service level agreement to the Client upon the terms of the Client Agreement and in accordance with Good Industry Practice in consideration of the payment of the Charges by the Client.		
2.2	The Company will never require the Client to advertise for the Company on their website in any way shape or form unless agreed upon, such as a non-profit organisation receiving complimentary hosting.		
2.3	The Client is allowed to use the Company's services for personal and/or business/commercial websites or content.		
2.4	The Charges for the Services shall be as set out in the Client Agreement.		
<b>3.</b>	<b>Content</b>		
3.1	All Services provided by the Company may be used by the Client for lawful purposes only.		
3.2	Transmission, storage, or presentation of any information, data or material by the Client in violation of any United Kingdom (or any other country) law is prohibited. This includes, but is not limited to: copyrighted material, material that is threatening or obscene, material that is "adult only" content, or material protected by trade secrets and other statute.		
3.3	The Client agrees to indemnify and hold harmless the Company from any claims resulting from the use of the Service in breach of Condition 3.2 above.		
3.4	The Company does not allow adult membership "xxx" related websites, pornography and sex-related content on its servers. Nor does the Company allow adult subscription or membership based "pay sites". This includes sexual content, or links to adult content hosted elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to the Company's servers or any other server on the internet. Links to such materials are also prohibited. The		
		3.5	Educational adult websites, dating sites, and adult e-commerce stores are allowed. If the Client is in any doubt, the Client should check with the Company before hosting such websites. The Company will be the sole arbiter as to what constitutes a violation of this provision.
		3.6	The Company considers the following as examples of unacceptable content, namely:- <ul style="list-style-type: none"><li>• Adult / Pornographic</li><li>• Hacking programs/Hacking Archives/ Hacking Information</li><li>• WareZ Sites</li><li>• Spam / Spamming Software</li></ul>
		3.7	The Client shall note that violation of indecency and obscenity laws can result in criminal penalties.
		<b>4.</b>	<b>Intellectual Property Rights</b>
		4.1	Material accessible to the Client through the Services may be subject to protection under United Kingdom (or any other country) copyright laws, or laws protecting trademarks, trade secrets or proprietary information.
		4.2	Except when expressly permitted by the owner of such rights, the Client must not use the Services in a manner that would infringe, violate, dilute or misappropriate any such rights, with respect to any material, which the Client accesses or receives through the Network.
		4.3	If the Client uses a domain name in connection with the Services or similar service, the Client must not use that domain name in violation of any trademark, service mark, or similar rights of any third party.
		<b>5.</b>	<b>SPAM and Unsolicited Email</b>
		5.1	The Company takes a zero tolerance approach to the sending of Unsolicited Email (SPAM).
		5.2	The Clients may not use or permit others to use the Services for sending SPAM Emails nor may the Client host, or permit hosting of, sites or information that are advertised by SPAM from other services.
		5.3	If the Client is found to be in violation of the Company's SPAM policy, the Company may, at its sole discretion, restrict, suspend or terminate the Client Agreement. In addition, the Company may impose a £100 penalty for each spam policy violation.
		5.4	The Company reserves the right to determine what violates this term. As such, any violation may result in cancellation of services without refund.
		<b>6.</b>	<b>"Catch All" Email Accounts</b>
		6.1	The Company does not allow the use of "catch all" email accounts. This is the practice of <a href="mailto:anything@yourdomain.com">anything@yourdomain.com</a> directing all mail to a single mailbox. This practice is out-of-date and causes extreme surges of spam, both for the Client and for the Company's spam filtering servers.
		6.2	To use an email address the Client must login to their control panel and create the required mailbox.
		6.3	Catch-all mailboxes are banned and if found will be removed by the Company without notice or the account

will be disabled.

## **7. Scripting, Applications and Background-running Programs**

7.1 The Company does not allow background-running programs. This includes any IRC related software such as bouncers and bots. The Company provides a hosting service not a shell service and accordingly the client is not allowed to compile and run software on the Company's hosting servers.

7.2 The Client is permitted to use any scripts (such as php, cgi or perl) it wishes provided they do not affect the normal operations of the server and they are not mentioned in Condition 7.4.

7.3 Scripts that are commonly known for causing server disruption include large cgi-based message forums, auctions, galleries, and banner exchanges. In the event a script affects normal server and/or administrative operations, the Company reserves the right to disable the account pending the Client's cooperation and resolution.

7.4 Scripts the Company does not allow include:

- Chat servers/scripts of any kind are strictly prohibited.
- Formmail scripts specifically using the filename "formmail" are prohibited. Formmail and contact forms are acceptable providing the script is not named "formmail" for its filename and providing that the Client maintains the latest version of the script and it remains secure and un-abused by spammers.

7.5 The Client shall be permitted to have ONE remote MySQL user if requested. The user must have a fixed, non-changing, IP address for the Company to grant access to. The Client can request a remote MySQL user via the Company's helpdesk.

## **8. Network Security**

8.1 The Client may not use the Network to attempt to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for the Client, logging into a server or account the Client is not expressly authorized to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organisation's security policy.

8.2 The Client may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network.

8.3 The Company will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations.

8.4 Users who violate system or network security may incur criminal or civil liability.

## **9. Cancellations**

9.1 The Company has a 30 day notice period for cancellation of the Client Agreement in respect of the Services but cancellation must be received at least 30 days before the Client's next invoice due date.

9.2 The Company will then stop all recurring payments and the Client will not be charged again.

9.3 Any invoices due within the notice period, or overdue invoices on the Client's account must be paid in full prior to cancellation taking effect.

9.4 Changing a domains DNS to another provider or transferring a domain away from the Company shall not constitute a hosting cancellation request. A cancellation request must be submitted via email and will be confirmed by the Company.

9.5 The Client acknowledges that termination of the Agreement for any reason will result in the Company ceasing to provide the applicable Services, with the consequences that flow from such cessation, including (but not limited to), deletion of data .e.g. hosting account(s), mail boxes and backups.

## **10. Payment**

10.1 Continuation of the Service is dependant upon receipt by the Company of payment of all stated charges. Subsequent payments are due on a reoccurring date that coincides with the date of signup (monthly or yearly terms).

10.2 Service may be interrupted on accounts that fall overdue (Such as insufficient funds to process Direct Debit payment). The Company may, at its sole discretion, charge a fee of £15.00 GBP to reinstate a suspended account.

10.3 When payment is declined from the Client's chosen payment method, the Company will send an email notification and retry payment the following day, this will occur 3 times over a 3-5 day period. After this period if the Company has not received payment or had notice from the Client that the due payment is in hand, the Client's account will be suspended and the Client Agreement terminated at the sole discretion of the Company.

10.4 It is very important the Client keeps its email address and telephone numbers on file with the Company current. Failure to keep the Company updated with accurate contact information may mean important communications don't reach the Client, resulting in suspension or termination of the hosting account.

10.5 A service charge, equal to the charge incurred by the Company, will be charged to the Client's account for each cheque, chargeback, disputed payment, or any other form of payment that is returned to the Company unpaid.

## **11. Refunds and Disputes**

11.1 All payments to the Company are non-refundable. This includes any setup fee and subsequent charges regardless of usage. If the Client disputes a charge that, in the Company's sole discretion is a valid charge under the provisions of these Terms, the Client agrees to pay the Company an Administrative Fee for costs associated with pursuing that payment.

11.2 If the Client is paying annually for hosting services and cancel early before 12 months of service is over, the Company will issue a pro-rata refund for full unused months at time of cancellation. The Company does not charge or refund days or part-months.

11.3 The Company does not offer any kind of "money back guarantee" or initial "trial period".

11.4 All domain name registration fees are non-refundable, in whole or in part, even if the Client's domain name registration is suspended, cancelled or transferred prior to the termination of the Client Agreement term. Please be careful when ordering as spelling mistakes and 'typos' cannot be corrected or refunded.

## **12. VAT and Payment Currency**

- UK and EU clients will be billed in GBP (Pounds Sterling) and prices include VAT. If the Client is a VAT registered business in another EU member state then the Client must supply your VAT registration number for VAT to be zero-rated. If the Client's VAT registration number is not supplied or cannot be confirmed as valid, then VAT at the UK rate will apply.
- 13. Pricing**
- The Company reserves the right to change the pricing of products and/or services at any time at its own discretion.
- 14. Invoicing**
- The Company does not provide paper or hard-copy invoices. PDF invoices are sent via email.
- 15. Domain Name Expiry and Redemption Fee's**
- 15.1 The Company is not liable for expiry or loss of the Client's domain name.
- 15.2 Before a domain expires the Client will be reminded to renew their domain by email to the address the Company holds on file for the Client. On the date a domain expires it will be deactivated by the registry and no longer display the Client's website. Once a domain is deactivated upon expiry the Client will typically have somewhere between 5 and 30 days to contact the Company to renew the domain name at the Company's regular renewal rates before it drops into "redemption period" where the cost to renew then increases substantially. Note that some registries (such as .EU) place an expired domain into redemption immediately.
- 15.3 Redemption Period - Once a domain is in the "redemption period" the cost to renew it increases by \$250 USD (approx £179 GBP) +VAT. This is a cost charged by the registry and passed on to the Client by the Company. Redemption periods last between 30 and 60 days, and then the domain is released to the public so anyone can re-register the Client's domain and the Client will lose it.
- 16. Domain Transfers**
- 16.1 Any domain name registered by the Company (as your registrar) is the Client's to keep. You can transfer your domain name to a different registrar at any time once the domain is 90 days old - Newly registered domains do have a 90 day waiting period where they cannot be transferred from the Company to a different registrar.
- 16.2 The same 90 day 'no transfer' window applies when an expired domain is renewed or restored after being in the registry redemption period. Once 90 days have passed from renewing such domains they are then free to be transferred again.
- 17. Premium and Reserved Domains**
- Some domain names are classed as "premium" by the registries that operate them and although they may show up in availability results they cannot be registered at our usual rates. Similarly some registries reserve domains so they may only be registered under certain conditions that are checked after placing an order. If the Client attempts to register a domain name that is either premium or reserved then the Company's sales team will contact the Client as the order may need to be cancelled or further details discussed.
- 18. Upgrading & Downgrading**
- 18.1 When upgrading your service with the Company, if a change in server type is required the Company can usually extend our free migration service to help make the move as painless as possible.
- 18.2 When downgrading (or making significant and frequent changes) it will not always be possible to offer a free migration service and reasonable charges will be applicable to migration work where the Client does not wish to migrate themselves.
- 19. Managed Dedicated & Cloud Servers**
- 19.1 The Company's dedicated and cloud solutions include server management in the monthly fee. The Company defines server management as general maintenance, updates and security hardening of core packages to ensure the server performs as expected. The Company also includes additional administrative duties (such as installing custom server software requirements or accommodating customer requests) of up to 2 hours per month with such server. Additional management work, over this 2 hour inclusive, incurs a service fee based on a £70GBP/hour (+VAT) labour rate, billed in half-hour increments with a half-hour minimum charge.
- 19.2 Dedicated server specifications may vary over time as technology changes and the Company's stocks are sold and replenished. All hardware provided by the Company to the Client will be of comparable specification and performance to those specified in the Client Agreement.
- 19.3 The Company will make all reasonable efforts to satisfy the Client's requests for technical and/or administrative changes to the Client's dedicated servers. Certain tasks, such as repairing software/system faults caused by the customer, or installing certain additional software packages, may, at the sole discretion of the Company, incur a service fee based on a £60GBP/hour labour rate, billed in half-hour increments with a half-hour minimum charge.
- 19.4 The Client is responsible for and subject to all software vendor licensing terms, conditions, restrictions, and limitations. It is the Client's responsibility to ensure conformance to and abide by the specific terms and conditions of each application's licensing agreements.
- 19.5 Dedicated and Cloud servers come with an included amount of monthly bandwidth. It is possible for the Client's server to utilise more bandwidth than the included amount as it is not a hard quota where the server will stop responding when breached. Additional bandwidth beyond the Client's included quota is charged at a rate of £5 per 10GB. Bulk bandwidth can be purchased in advance at £50 per 1TB per month and is strongly recommended if the server is going to use more than the standard inclusive allowance.
- 19.6 The Company does not guarantee the off site backups of your server. The Company takes CDP backups as a precaution but cannot guarantee their availability, usability, or integrity. The Company schedules 4 backups per day but due to the number of variables which can dictate the speed a successful backup can be obtained it may not be possible to get 4 full backups on any given day. Backups are therefore scheduled on a best effort basis which may vary from day to day. The Company can accept no responsibility for any loss of data or consequences arising from this. The Company always recommends that the Client takes their OWN back ups of all data regularly for their own disaster recovery requirements.

19.7 Dedicated & Cloud servers are exempt from the following sections of our normal TOS:

- Background-running Programs - You can run background processes on dedicated servers.
- Banned Scripts - We do not enforce the banning of any scripts on dedicated servers.

## 20. Abuse

Any attempts to undermine, slander, libel, threaten, or cause harm to a Company server, customer, employee, or the Company directly is strictly prohibited and is grounds for immediate termination without refund. In addition, the Company will pursue all attempts to the fullest extent of the law.

## 21. Refusal of Service

The Company reserves the right at its sole discretion to refuse or cancel service. Violation of any of these Terms could result in a warning, suspension, or account termination. Accounts terminated due to policy violations will not be refunded. Domains terminated due to policy violations will not be released to the Client.

## 22. Complaints Procedure

22.1 The Company always strives to provide the highest standards of customer service. However, in the unlikely event of the Client having a complaint the Company will always do everything possible to ensure it is dealt with quickly and fairly.

22.2 Please contact the Company on the telephone number below to speak to someone from the department you feel is most relevant to your complaint (support, sales or billing).

Email: [inbox@sodgroup.co.uk](mailto:inbox@sodgroup.co.uk)

Telephone: 01560 428 031

22.3 If the Company's team are unable to resolve the Client's complaint they will refer the issue to someone at director level. Upon receipt of such complaint the director will investigate thoroughly and respond back to the Client directly.

22.4 If the Client prefers to put the complaint in writing please use the Company's postal address below:

Solutions on Demand Ltd, 11 Standalane,  
Stewarton, Ayrshire KA3 5BG

22.5 Please include your account domain name and as much detail as possible in your request, so we can fully investigate the Client's concerns before contacting the Client. Finally, please note that postal complaints may take longer to process and the Company would always advise customers (wherever possible) to contact us directly by email or telephone.

## 23. Indemnification

The Client agrees to defend, indemnify and hold harmless the Company against liabilities arising out of: (1) any injury to person or property caused by any products sold or otherwise distributed in connection with the Company's server, (2) any material supplied by the Client infringing on the proprietary rights of a third party and (3) copyright infringement.