

TERMS AND CONDITIONS - ALCHEMY SOCIAL (09/12)

1. PRIMARY OBLIGATIONS AND WARRANTIES

- 1.1. Alchemy Social shall:
 - 1.1.1. provide the Services materially in accordance with the Service Description;
 - 1.1.2. use all reasonable care and skill in the performance of the Services, and in the collection and collation of any data on which the Services are based or which is comprised within the Services.
- 1.2. The Client shall use all reasonable endeavours to ensure that any information provided to Alchemy Social is complete, accurate and in the agreed format.
- 1.3. Each of the parties shall:
 - 1.3.1. use all reasonable endeavours to perform its obligations under this Agreement in accordance with any written timetable for delivery of the Services agreed between the parties;
 - 1.3.2. ensure that its personnel, whilst on the premises of the other party, comply with that party's reasonable regulations governing security and health and safety as have been notified to it.
- 1.4. Each party warrants that:
 - 1.4.1. it has the full power and authority to enter into this Agreement;
 - 1.4.2. the use by the other party as permitted by this Agreement of any information, data, software, documentation, and/or services which it provides to the other party shall not infringe any third party Intellectual Property Rights.
- 1.5. The warranties expressly set out in this Agreement are the only warranties that each party gives to the other in respect of the subject matter of this Agreement. All other warranties, representations or terms of equivalent effect that might be implied by law are excluded to the extent permitted by law.

2. TERM

- 2.1. This Agreement shall be deemed to have commenced on the Commencement Date and, subject to the provisions for early termination set out in this Agreement, shall continue for the Initial Term and thereafter unless terminated by either party serving on the other not less than the Minimum Notice Period to expire on or after the end of the Initial Term (or at such other time as specified in the Schedule).

3. PAYMENTS AND INVOICING

- 3.1. The Client shall pay the Fees in the amount set out in and/or referred to in the Schedule and Appendices. All sums referred to in this Agreement are exclusive of VAT.
- 3.2. Alchemy Social will invoice the Client monthly in arrears and all invoices are payable in cleared funds within 30 days after the receipt of the relevant invoice by the Client, unless otherwise stated in the Schedule or notified by Alchemy Social in accordance with Clause 3.3.
- 3.3. Use of the Services is subject to credit checks. If the credit checks are carried out after the Commencement Date, Alchemy Social will consider the results of the credit checks in line with its internal policies and may amend its payment terms, including the requirement for any deposit or Fees payable in advance and/or direct debit arrangements, upon reasonable written notice to the Client via email or in accordance with Clause 14.1.
- 3.4. Without limiting Alchemy Social's other rights under these Terms and Conditions, Alchemy Social may, at its absolute discretion, suspend the provision of the Services upon reasonable notice to the Client:
 - 3.4.1. during any period in which payment of all or any part of the Fees are overdue; and/or
 - 3.4.2. pending mutual written agreement to the revised payment terms and/or receipt of any required deposit or Fees and/or set up of direct debit arrangements in accordance with Clause 3.3.The Client will not be entitled to any refund for any Fees attributable to the period during which the Services are suspended in accordance with this Clause 3.4.

3.5. If any sum payable by the Client to Alchemy Social is not paid by its due date, Alchemy Social shall be entitled to charge interest on the overdue amount at 2% above Barclays Bank plc's base rate from time to time. Interest will accrue on a daily basis from the due date up to the date of actual payment, after as well as before judgment.

3.6. If the Client does not meet any minimum fee requirement in a period as referred to in the Schedule, Alchemy Social shall be entitled to invoice the Client for the difference between the Fees actually payable in respect of that period and such minimum fee. Any such amount shall be payable to Alchemy Social as a debt.

3.7. If the AS Data and/or AS Materials are licensed on a user or machine licence basis, and the number of users or machines stated in the Schedule is exceeded, the Client shall become liable to pay increased licence fees on the basis of the increased number of users or machines.

3.8. Unless otherwise stated in the Schedule, the Fees will be fixed until increased on the date(s) set out in the Schedule or, if none, then each anniversary of the Commencement Date. Any such increase shall not exceed the percentage increase over the 12 months prior to the increase taking effect in the Retail Prices Index published by the Central Statistical Office (in the case of all other Fees).

3.9. If the index referred to in Clause 3.8 ceases to be published then a broadly equivalent index as may be agreed by the parties will be used as a substitute.

4. NATURE OF THE SERVICES

4.1. Alchemy Social's services are not intended to be used as the sole basis for any business decision, and are based upon data which is provided by third parties, the accuracy and/or completeness of which it would not be possible and/or economically viable for Alchemy Social to guarantee. Alchemy Social's services also involve models and techniques based on statistical analysis, probability and predictive behaviour. Alchemy Social is therefore not able to accept any liability, other than under Clause 1.1, for:

4.1.1. any inaccuracy, incompleteness or other error in the AS Data which arises as a result of data provided to Alchemy Social by the Client or any third party;

4.1.2. any failure of the Services to achieve any particular result for the Client or any Additional User.

4.2. Except as expressly and specifically provided in this Agreement, the Client assumes sole responsibility for results obtained from the use of the Services and for conclusions drawn from such use. Nothing in the Schedule should be deemed a guarantee of the volume of fans, leads, clicks, advertising impressions or any other form of acquisition that will be generated for the Client.

4.3. All advertising campaigns on Social Media Platforms are subject to acceptance and approval by the relevant Social Media Platform. Alchemy Social has no responsibility for the Client's advertising approval or performance on the Social Media Platform.

4.4. Alchemy Social shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Alchemy Social by the Client or obtained by Alchemy Social from the Social Media Platform on behalf of the Client in connection with the Services, or any actions taken by the AS Materials or Alchemy Social at the Client's direction.

4.5. The Client shall be solely responsible for the Social Media Platform Fees incurred in relation to the Services. In the event that additional costs are incurred by the Client caused by a technical fault in the Services, not attributable to the Social Media Platforms, Alchemy Social will waive and not invoice the Client for any additional AS Fees payable to Alchemy Social by the Client as a result of, and to the extent of, the technical fault in the Services.

4.6. The Client hereby acknowledges and agrees that:

4.6.1. in providing the Services Alchemy Social may be (directly and indirectly) collecting, Processing and/or storing Social Data from Social Media Platforms on behalf of the Client (and this may include Personal Data as well as non-Personal Data) and such data is Client Data;

- 4.6.2 in respect of the Client Data and the Social Data shall be deemed to be losses and liabilities of the Client;
- 4.6.3 in respect of the Client Data and the Social Data shall be deemed to be losses and liabilities of the Client;
- 4.6.4 in respect of the Client Data and the Social Data shall be deemed to be losses and liabilities of the Client;
- 4.6.5 in respect of the Client Data and the Social Data shall be deemed to be losses and liabilities of the Client;
- 4.7 The Client acknowledges that it will be able to access the website content of, correspond with, and purchase products and services from, Social Media Platforms through the Services and that it does so solely at its own risk. Alchemy Social makes no representation or commitment of any kind and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any of the Social Media Platforms, or any transactions completed, and any contract entered into by the Client, with any such Social Media Platform. Any contract entered into and any transaction completed via any Social Media Platform is between the Client and the relevant Social Media Platform Provider, and not Alchemy Social. Alchemy Social recommends that the Client refers to the Social Media Platform Provider's website terms and conditions and privacy policy prior to using the relevant Social Media Platform. Alchemy Social does not endorse or approve any Social Media Platform or the content of any Social Media Platform made available via the Services.
- 4.8 The Client shall ensure that the Authorised Users use the Services in accordance with the Terms and Conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement.
- 4.9 The Client shall be solely responsible for procuring and maintaining its network connections and telecommunications to the Services, as required, and all problems, conditions, delays, delivery failures and for all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the Internet.
- 5. ADDITIONAL USERS**
- 5.1. It may be of benefit to the Client for agreed third parties to have certain access to the Services. The Client shall therefore be entitled to allow Additional Users to exercise the Additional User Rights. In order to achieve this without the need for each Additional User to contract direct with Alchemy Social, the Client agrees as follows:
- 5.1.1. the Client shall procure that each Additional User complies with all relevant provisions of this Agreement; and
- 5.1.2. if any Additional User brings any claim against Alchemy Social in connection with the subject matter of this Agreement, the Client shall reimburse Alchemy Social in full for any amounts which Alchemy Social is obliged to pay to the Additional User in connection with such claim, and for any associated legal expenses reasonably and properly incurred by Alchemy Social. However, the Client shall be entitled to bring a claim (subject to Clause 12) against Alchemy Social in respect of all losses and liabilities suffered or incurred by an Additional User which have been directly caused by Alchemy Social's breach of this Agreement and which, for the purposes of this Clause 5.1 only,
6. **COMPLIANCE AND AUDIT**
- 6.1. Each party shall in connection with the provision or use of the Services (as appropriate) comply with all legislation, regulations, and other rules having equivalent force which are applicable to that party.
- 6.2. In addition to the general obligations under Clause 6.1 each of the parties shall:
- 6.2.1. notify all relevant details of any processing of Personal Data to the ICO as set out in the DPA and only process such Personal Data in accordance with the terms of its notification under the DPA;
- 6.2.2. comply with its obligations in respect of the rights of the individuals to whom the provision of the Services relates as set out in the DPA (including the data protection principles referred to in the DPA).
- 6.3. Alchemy Social shall (in circumstances where it is a data processor) process any Personal Data contained within the Client Data only in accordance with the instructions of the Client. The Client shall be deemed to have instructed Alchemy Social to process any such Personal Data to the extent reasonably necessary for the provision of the Services.
- 6.4. The Client shall ensure that the Processing by Alchemy Social (as contemplated by this Agreement) of any Personal Data which the Client makes available to Alchemy Social satisfies the requirements of the first data protection principle under the DPA.
- 6.5. Each party warrants that it shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data of the other party.
- 6.6. Each party shall permit the other (on reasonable notice and during normal working hours) to audit the first party's compliance with its obligations under this Agreement in relation to the use of any software, data or other materials. The party carrying out the audit shall:
- 6.6.1. observe the other party's procedures relating to the protection of confidential information about any clients or customers of the other party;
- 6.6.2. take all reasonable steps to minimise disruption to the other party's business during such audit.
- 6.7. In order to protect the integrity of the data used in connection with the Services, the Client shall:
- 6.7.1. comply with Alchemy Social's reasonable instructions and guidelines relating to data security;
- 6.7.2. not copy, interfere with and/or use in any unauthorised way any digital certificate, web certificate or any other security device provided by Alchemy Social.
- 6.8. If as a result of any changes in any legislation, regulations, codes, policies and/or rules of Social Media Platform Providers or other rules having equivalent force (including any reasonable interpretation thereof), Alchemy Social considers in its reasonable opinion that it is no longer commercially viable for Alchemy Social to continue to provide the Services at all or in accordance with this Agreement, or if any third party data software or services becomes unavailable to Alchemy Social, Alchemy Social shall be entitled to do one of the following on giving three months' prior notice to the Client:
- 6.8.1. modify the affected Services as necessary to accommodate such changes or unavailability ; or
- 6.8.2. terminate this Agreement (without liability) in respect of those Services which are affected by such changes or unavailability.
- 6.9. In exercising its rights under Clause 6.8, Alchemy Social will consult with the Client, and act reasonably and in a way which is consistent with its treatment of its other clients.

7. CONFIDENTIALITY

7.1. Each party shall, in respect of the Confidential Information for which it is the recipient:

- 7.1.1. keep the Confidential Information strictly confidential and not disclose any part of such Confidential Information to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;
- 7.1.2. take all reasonable steps to prevent unauthorised access to the Confidential Information;
- 7.1.3. not use the Confidential Information other than for the purposes set out in this Agreement.

7.2. The parties may disclose the Confidential Information to, and allow its use in accordance with this Agreement by, the following provided that it shall procure that any party to whom it discloses Confidential Information shall observe the restrictions in this Clause 7:

- 7.2.1. employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement;
- 7.2.2. the recipient's auditors and professional advisors solely for the purposes of providing professional advice;
- 7.2.3. if Alchemy Social is the recipient, agents and sub-contractors of Alchemy Social involved in performing Alchemy Social's obligations under this Agreement, and Alchemy Social group companies;
- 7.2.4. if Alchemy Social is the recipient the Information Commissioner's Office pursuant to any requirement to do so (whether legally binding or otherwise), and any person as permitted by the DPA or any other statutory provision;
- 7.2.5. if the Client is the recipient, Additional Users to the extent required to enable such Additional Users to exercise the Additional User Rights.

7.3. The restrictions in Clause 7.1 do not apply to any information to the extent that it:

- 7.3.1. is or comes within the public domain other than through a breach of Clause 7.1; or
- 7.3.2. is in the recipient's possession (with full right to disclose) before receipt from the other party; or
- 7.3.3. is lawfully received from a third party (with full right to disclose); or
- 7.3.4. is independently developed by the recipient without access to or use of the Confidential Information; or
- 7.3.5. is required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body or in accordance with the rules of any recognised stock exchange.

8. LICENCE AND USE

8.1. Alchemy Social grants the Client a non-exclusive, non-transferable licence to use any AS Data and/or AS Materials provided as part of the Services in the Territory for the Permitted Purpose on any licence terms identified in the Schedule. The licence granted under this Clause is made separately in respect of each individual element of the AS Data and/or AS Materials and commences on the day that each such element of the AS Data and/or AS Materials is first made available to the Client. The licence does not include the Anonymised Data or the Insights.

8.2. Notwithstanding anything to the contrary in this Agreement, any software included in the AS Materials which are made available by a Social Media Platform Provider (**the "Social Media Platform Provider's Components"**) are made available to the Client

- 8.2.1. on the relevant Social Media Platform Terms and Conditions from time to time and the Client's licence for such components is directly between the Client and the Social Media Platform Provider; and
- 8.2.2. subject to the user of the relevant Social Media Platform agreeing to such use by or on behalf of

the Client Alchemy Social gives no warranties, representations undertakings or indemnities (express or implied) in respect of the Social Media Platform Provider Components.

The Client is at all times responsible for its use of the Social Media Platform Provider's Components and for ensuring that the Client complies with the Social Media Platform Terms and Conditions from time to time in respect of such use which the Client shall obtain from the Social Media Platform Provider directly.

8.3. The licence granted under Clause 8.1 will automatically expire on termination of this Agreement for any reason (unless the licence is expressed in the Schedule to be perpetual in which case the licence and any terms relating to the extent and/or exercise of that licence shall remain in force notwithstanding termination of the Agreement, except if termination is by Alchemy Social under Clause 13.1.

8.4. The Client grants Alchemy Social:

8.4.1. a, royalty free, non-exclusive, non-transferable licence to use and copy the Client Data which is provided to Alchemy Social or input into any of Alchemy Social's databases under or in accordance with the terms of this Agreement (i) for the purpose of providing the Services and exercising its rights under the Agreement (and for any other purpose that may be mutually agreed from time to time in writing between the parties) and/or (ii) in order for Alchemy Social to comply with any requests made to Alchemy Social under statute;

8.4.2. subject to Clause 8.4.1 for the Term, a royalty free, non-exclusive and non-transferable licence to copy and use any Client Materials in order to perform its obligations under this Agreement.

8.5. The Client further grants Alchemy Social a worldwide, irrevocable, non-exclusive, transferable, fully paid-up, and royalty-free licence:

8.5.1. to anonymise (and aggregate where applicable) the Social Data and Activity Data during the Term, and for a period of six weeks thereafter, to produce Anonymised Data; and

8.5.2. to perpetually use and analyse the Anonymised Data for the purposes of

(i) Alchemy Social's business intelligence (including enhancing the applicable features and functionality of the Services); and/or

(ii) Alchemy Social's marketing and sales collateral (including the Insights).

The Client shall have no rights to the Anonymised Data. The Anonymised Data is always anonymised and therefore does not include Personal Data or Social Data.

8.6. The Services may use Cookies to track advertising effectiveness and/or to identify unique website users. This will involve either Alchemy Social domain Cookies or Client domain Cookies. In all cases, the Client shall be responsible for providing notice relating to such Cookies to the user of the web browsers and obtain lawful consent from the user for the use of such Cookies including as may be required by the DPA and/or the Privacy and Electronic Communications Regulations 2003 (as amended).

8.7. The Client agrees that it will:

8.7.1. use the Services, AS Data and/or AS Materials for the Permitted Purpose only and in accordance with any Documentation;

8.7.2. (subject to Clause 5) not sell, transfer, sub-license, distribute, commercially exploit or otherwise make available to, or use for the benefit of, any third party any of the Services, AS Data and/or Alchemy Social Materials;

8.7.3. not (and will not allow any third party to) adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the AS Data and/or AS Materials without the prior written consent of Alchemy Social or as otherwise permitted by law;

8.7.4. only take such copies of the Alchemy Social Data and/or AS Materials as are reasonably

- required for the use of the Alchemy Social's Data and/or AS Materials in accordance with this Agreement;
- 8.7.5 in the case of a machine and/or site specific licence, only use the Alchemy Social's Data and/or AS Materials on the equipment and/or at the site (as the case may be) specified in the Schedule;
- 8.7.6 procure that each Authorised User shall keep a secure password for his use of the Services, where such password is issued by Alchemy Social, and that each Authorised User shall keep his password confidential;
- 8.7.7 not store, distribute or transmit any Viruses, or any material through the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities; causes damage or injury to any person or property. Without prejudice to any other right or remedy of Alchemy Social, Alchemy Social reserves the right, without liability to the Client, to disable the Client's access to the Services and / or to any material that breaches the provisions of this Clause 8.7.7
- 8.8 Alchemy Social shall not be in breach of its obligations under Clause 1.1.1 with regard to any Services or software provided to the Client under this Agreement to the extent that any failure of the Services or software to comply with its Service Description has no material effect upon those Services or the functionality of the software or upon the ability of the Client to use or receive the Services or use the software.
- 9. UPDATES**
- 9.1. Alchemy Social will from time to time at its own cost and expense and in its absolute discretion update the various elements contained in the AS Materials and/or AS Data and agrees to make available such updates to the Client as soon as reasonably practicable after Alchemy Social has produced the updates. Such updates must be implemented by the Client immediately. Use by the Client of such updates will be subject to this Agreement. Alchemy Social reserves the right to charge for new updates of such AS Materials and/or AS Data if those updates contain enhancements to functionality, such charges to be at Alchemy Social's then currently applicable rates.
- 10. INTELLECTUAL PROPERTY RIGHTS**
- 10.1. All Intellectual Property Rights in the Client Materials will remain vested in the Client (or its relevant licensors) and to the extent that any rights in such materials vest in Alchemy Social by operation of law, Alchemy Social hereby assigns such rights to the Client.
- 10.2. All Intellectual Property Rights in the Alchemy Social Materials, the AS Data and the Derivative Output will remain vested in Alchemy Social (or its relevant licensors) and to the extent that any rights in such materials and data vest in the Client by operation of law, the Client hereby assigns such rights to Alchemy Social.
- 10.3. Each party:
- 10.3.1. acknowledges and agrees that it shall not acquire or claim any title to any of the other party's Intellectual Property Rights (or those of the other party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights;
- 10.3.2. agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other party's ownership (or the other party's licensors' ownership) of such Intellectual Property Rights;
- 10.3.3. agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the materials of the other party and agrees to incorporate any such proprietary markings in any copies it takes of such materials.
- 10.4. Alchemy Social is and shall be the exclusive owner of the Insights and Alchemy Social may during and after the Term use the Insights in whatever manner Alchemy Social may in its discretion choose. Such Insights shall not contain personally identifiable information of the Client or its customers without the Client's express permission.
- 11. THIRD PARTY CLAIMS**
- 11.1. Subject to Clause 11.3, Alchemy Social shall fully indemnify the Client against:
- 11.1.1. any amounts paid by the Client to any third party as a result of or in connection with any claim which that third party brings against the Client alleging that its Intellectual Property Rights are infringed by the provision by Alchemy Social to the Client of the AS Materials or the use of the AS Materials by the Client as permitted by the terms of this Agreement; and
- 11.1.2. any associated legal expenses reasonably and properly incurred.
- 11.2. Subject to Clause 11.3, the Client shall fully indemnify Alchemy Social against:
- 11.2.1. any amounts paid by Alchemy Social to any third party as a result of or in connection with any claim which that third party brings against Alchemy Social alleging that its Intellectual Property Rights are infringed by the provision by the Client to Alchemy Social of the Client Materials or the use of the Client Materials by Alchemy Social as permitted by the terms of this Agreement; and
- 11.2.2. against any and all losses, liability, damage, costs, charges, fines, demands and expenses incurred (including legal expenses reasonably and properly incurred) by Alchemy Social arising out of any claim made against Alchemy Social or its group companies or its sub-contractors by a third party in relation to the processing of any material using the AS Materials and/or the Services contrary to this Agreement. The provisions of 12.5 shall not apply to this Clause 11.2.2; and
- 11.2.3. any associated legal expenses reasonably and properly incurred.
- 11.3. The indemnities in Clauses 11.1 and 11.2 shall not apply to the extent that any claim arises as a result of use of an infringing design supplied or made by the indemnified party, and are subject to the indemnified party:
- 11.3.1. notifying the indemnifying party promptly on becoming aware of any matter or claim to which the indemnity might relate;
- 11.3.2. not making any admission, settlement or payment in respect of such matter or claim, other than a payment made pursuant to a court order, without the prior written consent of the indemnifying party (such consent not to be unreasonably withheld or delayed); and
- 11.3.3. allowing the indemnifying party, where appropriate, to appoint legal advisers of its choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim and the indemnified party shall comply with the indemnifying party's reasonable requests in the conduct of any such negotiations and/or proceedings.
- 11.4. If any claims are made, or in Alchemy Social's reasonable opinion are likely to be made, by any third party alleging that its Intellectual Property Rights are infringed by the Client's use of the AS Materials as permitted by the terms of this Agreement, Alchemy Social may at its sole option and expense:
- 11.4.1. procure for the Client the right to continue using the relevant AS Materials (or any part of them) in accordance with the terms of this Agreement;
- 11.4.2. modify the relevant AS Materials to avoid the infringement or replace the relevant AS

Materials with non-infringing materials, whilst still providing the same, or substantially similar, functionality to the infringing materials.

11.5. This Clause 11 sets out the entire liability of both parties and the sole remedy of both parties with respect to the infringement of a third party's Intellectual Property Rights and any claims relating to the indemnities given in Clause 11.

12. LIMITS ON LIABILITY

12.1. Neither party excludes or limits its liability to the other for any of the following (and nothing in this Agreement shall be construed as excluding or limiting such liability):

- 12.1.1. for breach of its obligations under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
- 12.1.2. for personal injury or death resulting from its negligence or that of its employees, agents and/or sub-contractors;
- 12.1.3. for breach of Clause 7;
- 12.1.4. (in the case of the Client) for any intentional breach of Clause 8.7.2;
- 12.1.5. for any matter which it would be illegal for that party to exclude and/or limit, or attempt to exclude and/or limit, its liability; or
- 12.1.6. for that party's fraud or fraudulent misrepresentations.

12.2. The liability of each party to the other (whether in contract, negligence, breach of statutory duty or under any indemnity or otherwise) in respect of any claims for the damage to or loss of tangible property (excluding claims for loss or corruption of, or damage to, data contained on any tangible media) shall be limited to £1 million per claim or series of claims arising from any one incident.

12.3. Except as provided in Clauses 12.1, 12.2 and 12.4, the liability of each party to the other in respect of any claims (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) brought under or in connection with this Agreement shall be limited as follows:

- 12.3.1. for all claims arising in the first Contract Year, liability shall be limited in aggregate to the Initial Contract Value;
- 12.3.2. for all claims arising in any subsequent Contract Year liability shall be limited in aggregate to the AS Fees (excluding VAT) paid by the Client to Alchemy Social under this Agreement in the previous Contract Year (excluding, for the avoidance of doubt, any Social Media Platform Fees).

12.4. The limitations in Clause 12.3:

- 12.4.1. shall not apply to the indemnities given by the parties under Clause 11.1 and 11.2;
- 12.4.2. shall not apply to any liability of the Client under Clause 5.1.2;
- 12.4.3. shall be in addition to the obligation of the Client to pay Fees and charges under this Agreement.

12.5. Subject to Clause 12.1, neither party shall be liable to the other (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) for:

- 12.5.1. any indirect or consequential loss;
- 12.5.2. the following types of financial loss; loss of profits; loss of earnings; loss of business or goodwill; even if that party had notice of the possibility of the other party incurring such losses;
- 12.5.3. the following types of anticipated or incidental losses; loss of anticipated savings; increase in bad debt; failure to reduce bad debt; even if that party had notice of the possibility of the other party incurring such losses.

13. TERMINATION

13.1. Either party shall be entitled to terminate this Agreement immediately by serving written notice on the other party in the following circumstances:

13.1.1. if the other party commits a material breach of any of its obligations under this Agreement which is not capable of remedy;

13.1.2. if the other party commits a material breach of any of its obligations under this Agreement which is not remedied within 28 days after receipt of a notice from the party not in breach specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination;

13.1.3. if the other party has passed a resolution for its winding up (save for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (save for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person, or is the subject of a notice to strike off the register at Companies House, or is dissolved or declared bankrupt, or has a receiver, administrator or administrative receiver appointed over all or part of its assets, or enters into an arrangement with its creditors, or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, or ceases to trade or takes or suffers any similar action.

13.2. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party which have accrued before termination or which are intended to continue to have effect beyond termination.

13.3. Upon termination of this Agreement (or the relevant elements of it) and subject to Clause 13.4:

13.3.1. the parties shall each promptly return the Confidential Information of the other party to its owner;

13.3.2. the Client shall, at Alchemy Social's request either return the AS Materials and AS Data to Alchemy Social or destroy such materials and, if destroyed, provide a certificate stating that such materials have been destroyed;

13.3.3. Alchemy Social shall promptly return the Client Materials and Client Data to the Client.

13.4. Alchemy Social's obligations under Clause 13.3 shall not apply where it is necessary to retain any Confidential Information or materials of the Client to exercise any rights granted under this Agreement which are intended to survive termination of the Agreement and/or to the extent that it would be impracticable to return any such Confidential Information or materials as a result of such Confidential Information or materials having been reformatted in order for Alchemy Social to provide the Services or for Alchemy Social to exercise any rights granted under this Agreement.

14. GENERAL

14.1. Any notices to be sent by one party to the other in connection with this Agreement except for the service of Court proceedings shall be in writing and shall be delivered personally or sent by special delivery post (or equivalent service offered by the postal service from time to time) or fax to the addresses of each party as set out on the front page of the Schedule or as otherwise notified in accordance with the provisions of this Clause.

14.2. Notices shall be deemed to have been duly given: if delivered personally, upon delivery; if sent by post, two clear days after the date of posting; if sent by fax, when transmitted provided that a confirmatory copy is sent by special delivery by the end of the next business day after transmission.

14.3. Except as provided in Clause 14.4 neither party may assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

14.4. Alchemy Social shall be entitled to sub-contract any or all of its obligations under this Agreement to a sub-contractor but

by doing so Alchemy Social shall be responsible for the acts and omissions of the sub-contractor to the same extent as if it had carried out the obligations itself pursuant to this Agreement.

- 14.5. Each party agrees to act reasonably in considering a request to cooperate with publicity-related releases or other promotional activity made by the other party. No such promotional activity shall take place without the consent of the other party.
- 14.6. If any part of this Agreement is found to be invalid or unenforceable by any Court or other competent body, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.
- 14.7. Neither party will be liable for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event of Force Majeure.
- 14.8. If either party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that party from exercising that right or remedy subsequently in respect of that or any other incident.
- 14.9. A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach or provision. Any waiver of a breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.
- 14.10. This Agreement and all matters arising out of it shall be governed by, and construed in accordance with, the laws of England. The English courts shall have exclusive jurisdiction over any claim or matter which may arise out of or in connection with this Agreement.
- 14.11. Variations of this Agreement shall not be effective unless recorded in writing signed by the parties; variations in electronic form shall not count as variations recorded in writing. However, variations to the Schedule made in accordance with any agreed change control procedure shall be effective.
- 14.12. This Agreement sets out all the terms agreed between the parties relating to the subject matter of this Agreement and supersedes any previous agreement between the parties relating to the same subject matter. Each party acknowledges that in entering into this Agreement it does not rely upon, and neither of the parties shall be bound by, or liable to the other party for, any representation, promise or inducement made by it or by any agent or person on its behalf which is not expressly contained in this Agreement.
- 14.13. The parties hereby agree that nothing in this Agreement shall be construed as creating a right which is enforceable by any person who is not a party to this Agreement or a permitted assignee of such a party.
- 14.14. Each party shall, at the reasonable request and cost of the other party, do whatever is reasonably required to give the other party the full benefit of all the provisions of this Agreement.
- 14.15. Nothing in this Agreement is intended to, or shall, operate to:
 - 14.15.1. create a partnership or joint venture of any kind between the Client and Alchemy Social;
 - 14.15.2. authorise either party to act as agent for the other party;
 - 14.15.3. authorise either party to act in the name or on behalf of, or otherwise to bind, the other party in any way.
- 14.16. In this Agreement:
 - 14.16.1. any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;
 - 14.16.2. references to clauses and schedules are to the Clauses of and the Schedule to this Agreement;
 - 14.16.3. the singular includes the plural and vice versa;
 - 14.16.4. the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
 - 14.16.5. where any matter is to be agreed, such agreement must be recorded in writing;
 - 14.16.6. wherever the words "including", "include", "includes" or "included" are used they shall be

deemed to be followed by the words "without limitation" unless the context otherwise requires.

- 14.17. The contents of the Schedule shall prevail over the contents of these Terms and Conditions to the extent of any conflict or inconsistency

15. DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings:

	Meaning
Activity Data	The data collected by Alchemy Social in relation to the use of the AS Materials and the Services (including the contents, management performance and effect of activities (advertising or otherwise) conducted using the AS Materials and/or the Services);
Additional User	The persons or organisations to whom Alchemy Social supplies the Services, the AS Materials and/or the AS Data in addition to the Client;
Additional User Rights	The rights granted to the Client to enable the Client to make the Services available to the Additional Users and/or to use the Services on behalf of the Additional Users;
Anonymised Data	The Social Data and/or Activity Data anonymised by Alchemy Social pursuant to Clause 8.5;
AS Data	Any of the data and/or databases (including the Dashboard) supplied by Alchemy Social to the Client in connection with this Agreement but excluding the Client Data;
AS Fees	The fees payable by the Client to Alchemy Social in relation to the provision of the Services (excluding Social Media Platform Fees);
AS Materials	Any of the items developed and/or licensed by Alchemy Social to the Client in connection with this Agreement and includes software, Cookies and Documentation but excludes AS Data ;
Authorised Users	those employees, agents and independent contractors of the Client who are authorised by the Client to use the Services;
Client	The party named as the Client in this Agreement;
Client Data	Any of the data and/or databases owned by the Client and/or any Additional Users and made available to Alchemy Social in connection with this Agreement but excluding any data supplied to the Client or any Additional Users by Alchemy Social . For the avoidance of doubt, Client Data includes Social Data;
Client Materials	Any of the items provided to Alchemy Social by the Client and/or any Additional Users in connection with this Agreement and includes Client Data;
Client Products	Those products and services sold by the Client or its Additional Users (as the case may be) in respect of which the Services are provided;
Commencement Date	The Commencement Date set out in the Schedule in respect of the Services covered by the Schedule or in the absence of such date then the date that the individual signature sheet identifying this Agreement is signed by both parties;
Confidential Information	Any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of the parties and/or to their customers, suppliers, clients or Group Companies in or on any medium or format;
Contract Year	A twelve calendar month period from the Commencement Date or any anniversary of the Commencement Date;
Cookies	A small file, typically of letters and numbers, downloaded on to a device when a Social Media Platform user accesses certain websites to recognise the user's device;

	Meaning		Meaning
Dashboard	Any dashboard (and the data and information contained within it but excluding the Client Social Data) through which the Client has access to certain data, information or analytics derived by Alchemy Social from the Client Data and the provision of the Services;	Personal Data	The meaning specified in the DPA;
Derivative Output	Information, data and materials that are derived, prepared or generated by Alchemy Social and/or its sub-contractors, including the results of any integration work carried out by Alchemy Social with or on any Client software or software system with the AS Materials pursuant to (and/or as a consequence of) the Services, but excluding the Client Materials themselves;	Processing	The meaning specified in the DPA;
Documentation	Any or all of the Service Description, user documentation, product documentation, technical documentation including guidelines relating to data security and access and/or statements of functionality;	Schedule	The schedule(s) containing the specific terms relating to this Agreement;
DPA	The Data Protection Act 1998 and any subordinate legislation having effect in England;	Services	The services as specified in the Schedule and all other services supplied by Alchemy Social to the Client under or in connection with this Agreement, including the provision and grant of licences in respect of any AS Data and/or Alchemy Social Material;
Fees	The AS Fees together with the Social Media Platform Fees;	Social Data	The data that the Client authorises Alchemy Social to collect (either directly or indirectly) on the Client's behalf from Social Media Platforms and use in the provision of the Services. Such data may include Personal Data. For the avoidance of doubt Social Data does not include the Derivative Output of such data, any Dashboard, any Anonymised Data or the Insights or any data included therein, all rights in which are, and shall remain, at all times the property of Alchemy Social;
Force Majeure	Any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of payment systems, or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations;	Social Media Platforms	Any form of platform (including any web, desktop or mobile based technologies and applications) that facilitates the creation and exchange of user-generated content (including user-generated advertising content) and/or advertising content and/or the display of advertisements. Examples include Facebook and Twitter. The Social Media Platforms for this Agreement shall be specified in the Schedule (together with those as otherwise agreed by the parties from time to time);
Group Company	Any company which is in relation to Alchemy Social or (as the case may be) the Client a subsidiary, holding company or subsidiary of a holding company as the terms " subsidiary" and "holding company" are defined by section 1159 of the Companies Act 2006;	Social Media Platform Fees	The fees payable by the Client, or Alchemy Social on the Client's behalf, to the Social Media Platform Provider being all fees incurred by the Client, or Alchemy Social on the Client's behalf, related to the Services (including fees payable related to placing advertising or creating applications or fan pages for the Client on the Social Media Platforms);
ICO	The Information Commissioner's Office (or any other title under which such office subsequently operates);	Social Media Platform Provider Service Description	A provider of Social Media Platforms including Facebook Inc.
Initial Contract Value	The greater of any minimum fee (and/or any fixed Fees) and the actual amounts due and payable by the Client as specified in the Schedule in the first Contract Year (or, where the Agreement subsists for less than twelve months, the Initial Contract Value shall be calculated with reference to the Fees due and payable for the actual duration of the Agreement) (excluding VAT) and always excluding any Social Media Platform Fees;	Territory	The document describing the Services as may be updated by Alchemy Social from time to time, the current version of which is available at www.company.alchemysocial.com/terms/ ;
Initial Term	The period specified as such in the Schedule;	Virus	The United Kingdom or such other territory as is specified in the Schedule;
Insights	Reports extrapolated, and programs, algorithms or recommendations created by Alchemy Social based on analysis of use of the Services collected by Alchemy Social;		Anything which may prevent or impair the operation of any computer software, hardware or network or any other service or device or adversely affect access to or the operation of any program or data, including the reliability of any program or data or adversely affect the user experience;
Intellectual Property Rights	Copyright, database right, domain names, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same;		
Live Date	The date set out in the Schedule or, if none, the date on which the AS Data and/or AS Materials or the Services are first available for use in a live operating or production environment other than for the purposes of testing;		
Minimum Notice Period	The minimum period of notice to be served by either party to terminate this Agreement as set out in the Schedule (and if none is specified 12 months);		
Normal Business Hours	9.00 am to 6.00 pm local UK time, each Business Day, meaning Monday to Friday (excluding bank holidays in the UK);		
Permitted Purpose	The internal business use of the Client and/or any Additional Users (as the case may be) in connection with the Client Products in the Territory and not in any event for the provision of any services to any third parties other than to Additional Users;		