

activereach Ltd Terms and Conditions

1. Background, Definitions and Interpretation

- 1.1 activereach Limited ("activereach") whose company number is 06716533 and whose registered office is at Woottens, Upper Woolhampton, Reading. RG7 5UA, England.
- 1.2 The following are the standard terms and conditions under which activereach sells hardware and software related services as set out in any submitted quotations or proposal and project specifications where applicable. These Terms and Conditions are the only terms and conditions upon which activereach is prepared to deal with the Customer and they shall govern the Agreement to the entire exclusion of all other terms and conditions.
- 1.3 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
- "Acceptance Certificate"** means a document to be used in conjunction with the supply of Products or Service to be signed by the Customer on delivery indicating their acceptance of that delivery;
- "Agreement"** means any agreements entered into between activereach and a Customer to which these standard Terms and Conditions apply;
- "Customer"** means the business entity, or other organisation with whom activereach contracts;
- "Supplier"** means any supplier of Products or Services to activereach;
- "Products"** means Voice or Dated related hardware, software and associated equipment that may be supplied by activereach; and
- "Services"** means any service supplied by activereach.
- 1.4 Any reference to a day or days refers to business days - that is any day which is not a weekend or public or bank holiday in the United Kingdom.
- 1.5 In this Agreement, unless the context otherwise requires:
- 1.5.1 words in the singular include the plural and vice versa and words in one gender include any other gender;
- 1.5.2 a reference to any statutory provision shall be construed as a reference to that statute or provision as from time to time amended;
- 1.5.3 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2. Customer Orders

The Customer must sign an activereach Order Form and if accepted by activereach, shall be subject to these Terms and Conditions and to the availability of all relevant Products and Services.

Where a Customer's order includes Products or Services to be procured by activereach from a Supplier, the Customer agrees that the terms and conditions of the Supplier shall apply Mutatis Mutandis as if between the Customer and activereach. In the event of a conflict between these terms and conditions and those of a Supplier, then these terms and conditions shall prevail save in the event that the conditions in conflict pertain specifically to obligations to the Supplier or relate to the Products or Services being provided by the Supplier.

3. Price Lists

Price lists, catalogues and any other promotional material supplied by activereach do not constitute contractual offers capable of acceptance. Subject to sub-clause 4.3 of these Terms and Conditions, prices shown in any such materials may be subject to change at any time prior to the entry by activereach and the Customer into a binding Agreement.

4. Quotations

- 4.1 All quotations are deemed to be subject to these Terms and Conditions and shall be valid for 14 days unless otherwise stated on the quotation.
- 4.2 activereach reserves the right to withdraw or amend any quotation prior to the Agreement.
- 4.3 activereach reserves the right to withdraw or amend any quotation following the Agreement where:
- 4.3.1 Products or Services are withdrawn by the Supplier;
- 4.3.2 the Supplier increases the charges for Products or Services to activereach; or
- 4.3.3 specifications of Products or Services are varied by the Supplier.

5. Product Specifications

- 5.1 activereach shall use reasonable endeavours to advise the Customer of variations to Product specifications following formal notification to activereach of such variations by the Supplier.
- 5.2 Where changes to Product specifications significantly alter the price or fitness for purpose of the Products activereach and the Customer shall agree upon such changes in writing or arrange for the supply of alternative Products.
- 5.3 Changes to Product specifications shall not provide grounds for cancellation of Customer orders unless such cancellation is agreed to in writing by activereach and the Customer.

6. Hardware and Software Products

- 6.1 Products shall be supplied by activereach on the terms and conditions of use for such Products as defined by the Supplier at the time of delivery.
- 6.2 activereach gives no warranty to the Customer in respect of Product that is purchased by activereach from a Supplier for resale to the Customer but shall take reasonable steps to assist Customer in pursuing warranty claims against the relevant Supplier.
- 6.3 Unless otherwise specified in the Agreement, activereach shall only deliver non-modifiable and executable run-time versions of Software.
- 6.4 The Customer must comply with the terms of the Supplier's software licenses.

7. Delivery and Acceptance

- 7.1 Unless it is agreed otherwise delivery shall be to the Customer's address as specified in the Agreement.
- 7.2 activereach shall not be liable for any shortfalls in delivery or variation from Product specification on delivery unless a claim in writing is made by the Customer within 3 days of delivery.
- 7.3 In circumstances where activereach has attempted to physically deliver Products to the Customer and the Customer is unable or unwilling to accept such delivery, the Customer will be charged for the cost of the failed delivery in addition to any and all subsequent attempts. If the Customer is unable to accept delivery, a new date shall be set by mutual

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agreement of the parties. If the Customer is unwilling to accept delivery, the parties shall seek to vary the Agreement as appropriate by mutual agreement or the Customer shall seek to terminate the Agreement in accordance with Clause 19 of these Terms and Conditions.

- 7.4 Where the necessity for such has been agreed in advance and not otherwise the Customer shall sign activereach's Acceptance Certificate stating on signature any defects or exclusions.
- 7.5 Acceptance of a delivery requiring an Acceptance Certificate is deemed to occur on the signing of the Certificate on the date of delivery, which date shall be recorded on the Certificate.
- 7.6 activereach shall on the signing of the Acceptance Certificate be entitled to invoice the Customer.
- 7.7 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Customer does not sign a required Acceptance Certificate, further work may be agreed between the parties to remedy such defects. activereach shall use all reasonable endeavours to undertake such work without delay.
- 7.8 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Customer does not sign a required Acceptance Certificate and subsequently uses the Hardware or Software or the results of Services provided without prior Agreement as to any remedial work on the part of activereach then the Customer is deemed to have accepted the same.
8. **Warranties**
- 8.1 Subject to Clause 6.2 of these Terms and Conditions and in respect of Product which is directly produced by activereach or Services provided directly by activereach, the only warranty given by activereach to the Customer is that activereach shall in accordance with normally accepted professional standards make good as quickly as is reasonably possible and at its own expense any defects identified on any relevant Acceptance Certificate or which develops during a period of 3 days after delivery of the Product or performance of the Services.
- 8.2 activereach does not warrant that the Products are free from minor errors not materially affecting performance. Such errors shall not be rectified in the absence of a prior written agreement to the contrary.
- 8.3 The undertaking given in this Clause shall not apply if the Product has been altered by any party other than activereach or has been operated or run on any platform or in any environment inappropriate for the Product.
- 8.4 Where activereach has supplied any Products in connection with the provision of the Services supplied by a third party, activereach does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the third party supplying the Products to activereach.
9. **Warranty Assistance**
- 9.1 Customer shall immediately notify activereach if any Products supplied by activereach prove to be defective in quality or condition within the Supplier's warranty period. Upon receipt of notification of such claim from the Customer, activereach shall notify the Customer whether, as a matter of Supplier policy, the claim must be handled directly with the Supplier or indirectly through activereach. In the event the claim must be handled directly between the Customer and Supplier, activereach shall provide contact information to enable the Customer to contact the Supplier. In the event will be handled by activereach, then activereach shall provide the Customer with a return material authorisation ("RMA") for the customer to return the Products to activereach, and the Customer shall return such Product to activereach in accordance with these Conditions and activereach's then current RMA policy (which shall be made available to the Customer upon request). No Products may be returned to activereach without a valid RMA number displayed on the Products packaging. Any Products returned without a valid RMA number displayed on the Products packaging will be refused or returned. activereach shall not be obligated to ship replacement Products to the Customer until activereach is in receipt of the original Products being returned and a valid warranty or support contract being in place.
- 9.2 The Customer agrees that activereach sole liability to the Customer regarding defect claims is limited to the administration of such claims with the Supplier and is expressly contingent upon activereach's ability to obtain a refund, credit or new replacement Products from the Supplier. activereach has no obligations to accept a return of Products that fail to comply with a Supplier's policy on Product returns.
- 9.3 activereach shall not be liable or responsible for administering any defect or other claim which arises from normal wear and tear, misuse, negligence, accident, abuse, use not in accordance with Supplier's Product documentation, modifications or alterations not authorised by Supplier, or use in conjunction with a third party product. Activereach reserves the right, in its sole discretion, to determine whether any Products are defective.
- 9.4 All transport charges incurred in returning or replacing Products are the responsibility of the Customer.
- 9.5 Notwithstanding the foregoing, activereach will provide limited, reasonable endeavours telephone and email support for the period of 30 days after delivery or installation, whichever shall be the earlier. Support after this period is dependent on a suitable support contract being enacted between the Customer and activereach.
10. **Return of Products**
- 10.1 The return of Products shall be at the sole discretion of activereach but in any circumstance where activereach agrees to accept return of Products for any reason then the Customer shall:
- 10.1.1 advise activereach in writing within 3 days from the date of delivery of Products by activereach of the reason(s) for the return of Products;
- 10.1.2 obtain an RMA number from activereach prior to any return of Products;
- 10.1.3 complete and return to activereach the Returns Form to arrive at activereach within 7 days from the date of delivery of Products by Customer;
- 10.1.4 properly pack the Products in the original packing where possible and include a detailed packing list;
- 10.1.5 return the Products in the condition in which they were received to arrive at activereach within 14 days from the date of delivery of Products by activereach; and
- 10.1.6 take no action to effect any warranties that may cover the Products.
- 10.2 Cancellation of an order must be made in writing and shall incur a cancellation charge;
- 10.2.1 for services, installation, or consultancy this will be 100% of the Order price if there are 5 or less working days to the first delivery date, or 50% of the Order price if there are 6 or more working days to the first delivery date;
- 10.2.2 for all other items the charge shall be £300 or 20% of the order price (exc VAT) whichever is the smaller.
11. **Title and Risk in the Property**
- 11.1 Risk of loss or damage in respect of any tangible item shall pass to the Customer on delivery or collection of the item by the Customer or Customer's agent.
- 11.2 The legal and beneficial ownership of Products and/or associated material supplied as part of Products and/or Services shall remain with activereach until payment in full in respect of all such Products and associated material supplied as part of Products and/or Services has been received by activereach in accordance with the terms of the Agreement.
- 11.3 Until such payment is received in full activereach may without prejudice to any of its rights recover or resell any of the Products and/or associated material and may enter upon the Customer's premises by its servants or agents for that purpose.

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- 11.4 Where a licence shall be granted by a Supplier and/or activereach to the Customer then the Customer shall not have the benefit of the licence until payment in full has been received by activereach.
- 11.5 Until ownership of the Products has passed to the Customer, the Customer must:
- 11.5.1 hold the Products on a fiduciary basis as activereach's bailee;
 - 11.5.2 store the Products (at no cost to activereach) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as activereach's property;
 - 11.5.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 11.5.4 maintain the Products in satisfactory condition insured on activereach's behalf for their full price against all risks to the reasonable satisfaction of activereach. On request the Customer shall produce the policy of insurance to activereach and
 - 11.5.5 hold the proceeds of the insurance referred to in condition 11.5.4 on trust for activereach and not mix them with any other money, nor pay the proceeds into an overdrawn bank account
- 11.6 The Customer's right to possession of the Products shall terminate immediately if:
- 11.6.1 the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
 - 11.6.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under this Agreement or any other contract between activereach and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Client ceases to trade; or
 - 11.6.3 the Customer encumbers or in any way charges any of the Products.
- 11.7 activereach shall be entitled immediately after giving notice of activereach's intention to repossess, to enter upon Customer's premises with such transport as may be necessary and repossess any Products to which activereach has title.
- 11.8 Without prejudice to other remedies, in respect of all outstanding activereach invoiced amounts due from the Customer, activereach shall have a general lien on the Customer's server and/or other equipment in its possession and shall be entitled, on the expiration of 14 days' notice after the Due Date to dispose of such Products or property as an agent for the Customer in such manner and at such price as activereach thinks fit and to apply the proceeds towards the outstanding activereach Charges due and shall when accounting to the Customer for any balance remaining be discharged from all liability in respect of such Products or property.
12. **Charges**
- 12.1 activereach shall render to the Customer an invoice or series of invoices in Pounds Sterling pursuant to the supply of Products and Services.
 - 12.2 Charges specified in the Agreement do not include Value Added Tax which, if applicable, shall be added at the rate in force at the time of supply.
 - 12.3 Unless specified in the Agreement and subject to Clause 7 of these Terms and Conditions:
 - 12.3.1 all Products shall be invoiced on the date of despatch to the Customer or collection of Products by the Customer or his agent; and
 - 12.3.2 all Services shall be invoiced in full and in advance.
 - 12.4 In the case of supply to a Customer outside the UK the Customer shall be responsible for all import levies, customs duties or other similar taxes of whatever nature.
 - 12.5 Where travel and subsistence expenses are incurred by activereach, a 5% administration charge shall be added to these expenses and such expenses as surcharged shall be payable to activereach by the Customer within 14 days of being invoiced.
13. **Payment**
- 13.1 The time stipulated for payment shall be of the essence of the Agreement and failure to pay within the period specified shall, in the absence of a written explanation from the Customer that has been duly accepted by activereach, render the Customer in material breach of the Agreement.
 - 13.2 Invoices shall be payable in Pounds Sterling within any other period stated for a particular charge or invoice but in any event no later than 14 days of the invoice date unless otherwise agreed in writing.
 - 13.3 If payment of any invoice is otherwise due it shall become automatically due immediately on the commencement of any act or proceeding in which the Customer's solvency is involved.
 - 13.4 Without prejudice to any other rights activereach may have in respect of any failure by the Customer to pay the charges or other monies payable pursuant to the Agreement, activereach may charge interest at the rate 5% above the base rate of the Bank of England from time to time in force, after as well as before judgement on any amount due from the Customer to activereach from the date due for payment until payment is received.
 - 13.5 activereach reserves the right to interrupt, suspend or terminate the Services to the Customer in the event of any default of payment. Such interruption does not relieve the Customer from paying any amount overdue and payable under this Agreement.
 - 13.6 If the Customer fails to pay any sum due, activereach may without prejudice to any other remedy withdraw the provision of Services or any part thereof until all overdue payments are made.
 - 13.7 Any credit note, balance or other liability issued by activereach to the Customer shall expire, without notice, within 12 months of the date of issuance by activereach. The Customer shall be deemed to have forfeited any right to such credit amounts and shall not be entitled to a replacement or repayment of any amounts related thereto.
14. **Customer's Obligations**
- 14.1 During the continuance of the Agreement the Customer shall:
 - 14.1.1 provide, free of charge, reasonable usage of machine time, communications, stationery, media, suitable working accommodation and access deemed necessary by activereach to fulfil the Agreement and shall provide an appropriate environment or platform to enable activereach to provide the Services or test run any Product and, in particular, the Customer warrants to activereach that the Customer shall provide an environment capable of receiving the Services or Products;
 - 14.1.2 furnish activereach promptly upon receipt of a request such information as activereach may reasonably require for the provision of the Services;
 - 14.1.3 nominate prior to the provision of any of the Services under the Agreement an authorised representative to be its prime point of contact with activereach during the continuance of the Agreement;

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- 14.1.4 ensure the accuracy and validity of all data and technical information provided to activereach;
 - 14.1.5 allow activereach reasonable access to its employees for the purpose of investigation and discussion in connection with the Agreement and ensure that its employees cooperate fully with activereach in relation to the provision of the Services;
 - 14.1.6 provide free and safe access to the Location as is necessary by activereach to comply with its obligations under the Agreement; and
 - 14.1.7 ensure that equipment provided by activereach for the purpose and provision of the Agreement shall not be modified, changed or removed without prior written permission of activereach. Where such equipment is modified, changed or removed then the cost of restoring or replacing the equipment, at the sole discretion of activereach, shall be recovered from the Customer.
 - 14.2 activereach and the Customer shall indemnify each other and keep each other fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by negligent act or omission, wilful misconduct or breach of contract by the other, its employees or agents.
15. **Performance**
- 15.1 activereach shall use its reasonable endeavours to comply with any day or dates for despatch or delivery of Products and for the supply of Services as stated in the Agreement. Unless the Agreement contains express provisions to the contrary, such dates shall constitute only statements of expectation and shall not be binding. If activereach, having used its reasonable endeavours fails to despatch or deliver the Products, or to supply or complete the Services by such date or dates whether or not binding, such failure shall not constitute a breach of the Agreement. The Customer shall not be entitled to treat the Agreement as thereby repudiated or to rescind it or any ancillary Agreement in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting there from.
 - 15.2 When expedited delivery is agreed to by activereach and the Customer and necessitates overtime or other additional costs, the Customer shall reimburse activereach for the amount of such overtime payment or other costs and shall pay the same within 14 days of invoice.
 - 15.3 If performance of the Agreement is suspended at the request of or delayed through default of the Customer including, but without prejudice to the generality of the foregoing, incomplete or incorrect instructions, or refusal to accept delivery of the Products or Services for a period of 14 days, activereach shall be entitled to payment at the then prevailing rates for the Services already performed, Products supplied or ordered and any other additional costs thereby incurred and the Customer shall pay such sums within 14 days of invoice.
16. **Business Associates and Delegation**
- 16.1 activereach may delegate any of its obligations or responsibilities arising out of the Agreement to any of its business associates. Performance by such associates shall be deemed to be performance by activereach.
 - 16.2 The Customer may not assign the benefit or burden of the Agreement in any way.
 - 16.3 At the written request of the Customer activereach may, at its sole discretion, agree to novation of the Agreement. Such agreement must be evidenced in writing.
17. **Proprietary Rights**
- 17.1 Unless otherwise specified in the Agreement, copyright and all other proprietary rights in the Products and associated documentation and any documentation supplied in respect of the Services and all parts and copies thereof shall remain vested in activereach or, for third party Products, in the Supplier.
 - 17.2 In respect of software where the proprietary rights are vested in activereach only a non-exclusive, non-transferable licence for the purpose for which the software has been made available to the Customer is deemed to be granted by activereach and only then on condition that the Customer fulfils all of their relevant obligations arising out of the Agreement.
18. **Liability**
- 18.1 The following provisions set out activereach's entire liability (including any liability for the acts and omissions of its employees) to the Customer in respect of:
 - 18.1.1 any breach of its contractual obligations arising out of the Agreement; and
 - 18.1.2 any representation, statement, breach of statutory duty or tortious act or omission, including negligence arising out of or in connection with the Agreement.
 - 18.2 The Customer's attention is drawn to the following provisions:
 - 18.2.1 activereach's liability to the Customer for death or injury resulting from its own or that of its employee's negligence or for fraudulent misrepresentation shall not be limited;
 - 18.2.2 any act or omission on the part of activereach falling within this clause shall known as an "Event of Default"; and
 - 18.2.3 subject to the limit set out below activereach shall accept liability to the Customer in respect of damage to the tangible property of the Customer resulting from the negligence of activereach or its employees or the breach of contract by activereach.
 - 18.3 Subject to the provisions of clause 18.2.1:
 - 18.3.1 activereach's entire liability in respect of any Event of Default shall be limited to the value of the Agreement;
 - 18.3.2 activereach shall not be liable to the Customer in respect of any Event of Default for loss of profits goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or activereach had been advised of the possibility of the Customer incurring the same. If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement; and
 - 18.3.3 activereach shall have no liability to the Customer in respect of any Event of Default unless the Customer shall have served notice of the same upon activereach within 6 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.
 - 18.4 The Customer hereby agrees to afford activereach not less than 90 days in which to remedy any Event of Default.
 - 18.5 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
19. **Cancellation or rescheduling of Order**
- The Customer shall not be entitled to cancel or reschedule any order for Product(s) and/or Service(s) or any part thereof except upon terms which reimburse activereach for loss of Profit and all costs, charges and expenses incurred by activereach in respect of the Product(s) and/or Service(s) or any part thereof up to the date of receipt by activereach of written notification of cancellation from the Customer. Cancellation or rescheduling of order is subject to a minimum of 6% of the total value of cancelled order (which amount the Customer agrees represents a genuine estimate of activereach's loss together with activereach's costs of recovering

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Products delivered or in transit.

20. Termination

- 20.1 Without prejudice to any other provision contained within these Terms and Conditions or of any Agreement activereach may terminate the Agreement by notice in writing in any of the following events:
- 20.1.1 the Customer commits a material breach of the Agreement which is incapable of remedy; or
 - 20.1.2 the Customer commits a material breach which is capable of remedy but which the Customer fails to remedy within 14 days of written notice by activereach specifying the event of default and requiring its remedy.
- 20.2 activereach and the Customer may by notice in writing to the other terminate the Agreement if the other shall have an administrator, receiver or liquidator appointed, shall pass a resolution for winding up (otherwise than for the purpose of amalgamation or reconstruction), if a Court shall make an order to that effect, if the other party shall enter into composition or arrangement with its creditor(s) or shall become insolvent. Such an event shall be deemed to be a material breach incapable of remedy.
- 20.3 activereach and the Customer shall be entitled to terminate the Services by giving the other party no less than 30 days' prior written notice upon termination of the Services. If the Services are terminated and activereach has not completed the Services, nevertheless, the Customer will be liable for the full costs as if the Services have been completed. In the event of termination by the Customer, activereach shall be under no obligation to provide the Services to the Client until full payment for the Services has been received by activereach. The termination date is calculated 30 days from the postmark date, email receipt date or facsimile receipt transmission date. Termination of this Agreement can only occur after and not before the end of any minimum contract length mentioned.
- 20.4 The Customer must send a written request notice for any refundable amount no more than 7 days after the termination date. activereach reserves the right not to refund any outstanding amount if the Customer fails to comply with this term.
- 20.5 Any set-up charge is non-refundable.

21. Consequences of Termination

- 21.1 Any termination of the Agreement howsoever caused shall not affect any accrued rights or liabilities of either activereach or the Customer arising out of the Agreement;
- 21.2 On termination of the Agreement for any reason, the Customer shall return forthwith to activereach the Products and all copies thereof, the documentation and the media supplied therewith and other items in the possession of the Customer which are the property of activereach.

22. Intellectual Property Indemnity

- 22.1 activereach shall indemnify and hold the Customer and its employees from and against all loss and damage and cost and expense resulting from or arising out of any threatened or actual infringement of patents, copyright, registered designs or other intellectual property rights belonging to any party provided that the Customer shall:
- 22.1.1 notify activereach in writing of any allegation or infringement;
 - 22.1.2 make no admission without activereach's consent; and
 - 22.1.3 at activereach's request allow activereach to conduct and/or settle all negotiations in or prior to litigation and give activereach all reasonable assistance in respect thereof.

23. Confidentiality

- 23.1 activereach and the Customer shall keep confidential the following:
- 23.1.1 the Agreement and all other information of the other party obtained under, or in connection with, the Agreement; and
 - 23.1.2 all oral communications, representations and information of any kind made by either party or their representatives or advisors pursuant to the conclusion or fulfilment of the Agreement.
- 23.2 The provisions of this Clause 23 shall not apply to:
- 23.2.1 any disclosure of the information contained in Clauses 23.1.1 and 23.1.2 for which the written agreement of both parties has been obtained;
 - 23.2.2 any information in the public domain otherwise than as a result of a breach of the Agreement;
 - 23.2.3 information that was already in the possession of the receiving party prior to disclosure by the other party; and
 - 23.2.4 information obtained from a third party who is free to divulge the same.
- 23.3 activereach and the Customer shall divulge confidential information only to those employees who are directly involved in the use of the Product(s) and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.
- 23.4 The obligations of the parties as to disclosure and confidentiality shall come into effect on the signing of the Agreement and shall continue in force notwithstanding the termination of the Agreement.

24. Health and Safety

- 24.1 The Customer shall take all reasonable precautions to ensure the health and safety of activereach's employees while on the Customer's premises.
- 24.2 activereach shall not be liable to the Customer in any civil proceeding brought by the Customer against activereach under any Health and Safety Regulations, except where such exclusion of liability is prohibited by law.
- 24.3 The Customer shall indemnify and keep indemnified activereach in respect of any liability, monetary penalty or fine in respect of or in connection with the Product(s) and Service(s) incurred directly or indirectly by activereach under any Regulations, orders or directions made there under arising or resulting from the Customer's default.

25. Data Protection

- 25.1 activereach and its suppliers reserves the right to put the names and other information from the registration form relating to its Customer into a computerised directory for internal use only.

26. Notices

- 26.1 Any notice pursuant to the Agreement shall be in writing signed by a Director of activereach or by some person duly authorised by a Director of activereach and shall be delivered personally, sent by prepaid recorded delivery (airmail if overseas) or by facsimile transmission to the party due to receive such notice at the address of the party as shown in the Agreement or to such other address as shall be notified in writing to the other party to the Agreement from time to time.
- 26.2 Any notice delivered personally shall be deemed to be received when delivered. Any notice sent by prepaid recorded delivery shall be deemed (in the absence of evidence of earlier receipt) to be received 48 hours after posting (6 days if sent by airmail). In proving the time of despatch it shall be sufficient to show that the envelope containing such notice was properly posted.
- 26.3 Any notice sent by facsimile transmission shall be deemed to have been received upon receipt by the sender of the correct transmission report.

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27. **Arbitration**
Subject to the agreement of the parties, if any dispute or difference shall arise between activereach and the Customer on any matter relating to or arising out of the Agreement, such a dispute shall be referred to the arbitration of a single Arbitrator to be agreed upon by the parties or failing agreement to be appointed by the then President of the Law Society of England and Wales.
28. **Waiver**
The rights and remedies of either party under the Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the other party nor any failure or delay by the other party in asserting or exercising any such rights or remedies.
29. **Severance**
If at any time any one or more clause, sub-clause, paragraph, subparagraph or any other part of the Agreement or these Terms and Conditions is held to be, or becomes, void or otherwise unenforceable for any reason under any applicable law the same shall be deemed omitted and the validity and/or enforceability of the remaining provisions of the Agreement or these Terms and Conditions shall not in any way be affected or impaired thereby.
30. **Variation**
No variation in the provisions of the Agreement shall be of any effect unless made in writing and signed on behalf of the Customer and activereach.
31. **Set-Off**
Neither activereach nor the Customer is entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.
32. **Force Majeure**
- 32.1 In the event that either party is prevented from fulfilling its obligations under the Agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to Sub-clause 32.2) the party shall not be deemed to be in breach of its obligations under the Agreement. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.
- 32.2 Sub-clause 32.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.
- 32.3 Each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.
- 32.4 If and when the period of such incapacity exceeds 6 months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.
33. **Non Solicitation**
- 33.1 Neither the Customer nor activereach shall during the term of the Agreement and for a period of 12 months thereafter solicit or entice away or endeavour to solicit or entice away from the other any employee who has worked under the Agreement without written consent of the other.
- 33.2 In addition to all other rights and remedies, the Customer shall pay activereach as liquidated damages a sum equivalent to 50% of the gross annual salary and all benefits and emoluments of the employee, representing the recruitment and training costs to activereach of replacing the employee and anticipated loss of profit or other loss attributable to the departure of the employee.
34. **Law and Jurisdiction**
The Agreement shall be governed by and construed in accordance with English law. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.
35. **General**
- 35.1 This Agreement together with the Proposal or Quotation or Project specification and annexed information agreed from time to time constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing by the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 35.2 Nothing in this Agreement or the Proposal or Quotation or Project Specification and annexed information shall constitute a partnership or joint venture between the parties.
- 35.3 In the event of conflict between the Proposal or Quotation or Project Specification and this Agreement the provisions of the former shall prevail.
- 35.4 The Customer shall not assign, sub-licence, extend or transfer its rights under this Agreement by operation of law or otherwise.
- 35.5 activereach shall be entitled to both
- 35.5.1 sub-contract any part of the Services to a third party where the third party own service terms and conditions would additionally apply to the customer and
- 35.5.2 assign, sub-contract or otherwise transfer its rights or obligations under this Agreement, in whole or in part to any company.
- 35.6 Provisions of this Agreement which are either expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination
- 35.7 The Parties agree that all rights (express or implied) afforded to any third party by the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.
- 35.8 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision
- 35.9 In the event that all or any part of the terms, conditions or provisions of this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.