

Narwhal Group Limited
General Terms & Conditions

1. Definitions and Interpretation

1.1 In these Conditions the following definitions apply:

Applicable Law	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
Bribery Laws	means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday;
Client	means the named party in the Contract which has agreed to purchase the Services from Narwhal Group and whose details are set out in the Order;
Commencement Date	the date set out in the Scope of Works;
Conditions	means Narwhal Group 's terms and conditions of supply set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between Narwhal Group and the Client for the supply and purchase of Services incorporating these Conditions, the Order and the Scope of Works and including all their respective schedules, attachments and annexures;
Fees	has the meaning set out in clause 6.1;
Force Majeure	has the meaning set out in clause 12.1;
Intellectual Property Rights	<p>means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:</p> <p>(a) whether registered or not;</p> <p>(b) including any applications to protect or register such rights;</p>

- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing.

Leads	means the contact details of third-party prospects who have completed an enquiry form and submitted this enquiry via one of Narwhal Group's website or marketing channels and which have been delivered to the Client via email or API;
Minimum Term	means the period of time for which Narwhal Group are to supply the Services to the Client as set out in the Scope of Works;
Narwhal Group	means Narwhal Group Limited a company incorporated and registered in England and Wales with company number 13603579 whose registered address is at 2 Charnwood House, Marsh Road, Bristol, BS3 2NA;
Order	means the order for the Services from Narwhal Group placed by the Client;
Renewal Period	means the period of time for which Narwhal Group are to supply the Services to the Client after the Minimum Term has expired and as set out in the Scope of Work;
Scope of Works	means the description of the Services to be provided to the Client by Narwhal Group as set out or referred to in the Contract;
Services	means the services (including where appropriate lead generation services) set out in the Scope of Works and to be performed by Narwhal Group for the Client in accordance with the Contract;
Term	means the length of this Contract as set out in the Scope of Works;
VAT	means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services; and
Website	means the Client's website for which Narwhal Group are providing the Services and as set out in the Scope of Works.

1.2 In these Conditions, unless the context requires otherwise:

- 1.2.1 a reference to the Contract includes these Conditions, the Scope of Works and their respective schedules, appendices and annexes (if any);

- 1.2.2 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;
- 1.2.3 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- 1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- 1.2.5 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.6 a reference to a gender includes each other gender;
- 1.2.7 words in the singular include the plural and vice versa;
- 1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;
- 1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- 1.2.10 a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time;
- 1.2.11 a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- 1.2.12 a reference to pounds or £ is to an amount in Great British Pounds;
- 1.2.13 a reference to legislation includes all subordinate legislation made under that legislation; and
- 1.2.14 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2. Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between Narwhal Group and the Client. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Client's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Narwhal Group otherwise agrees in writing.
- 2.3 Narwhal Group may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
 - 2.3.1 the Client signing the Scope of Works; or
 - 2.3.2 Narwhal Group performing the Services or notifying the Client that they are ready to be performed (as the case may be).
- 2.4 Rejection by Narwhal Group of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Client.
- 2.5 Narwhal Group may issue quotations to the Client from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Client.

- 2.6 Marketing and other promotional material relating to the Services are illustrative only and do not form part of the Contract.

3. Commencement and Term

- 3.1 The Services shall be provided under these Conditions from the Commencement Date for the Minimum Term and thereafter for further Renewal Periods until it is terminated:
- 3.1.1 by Narwhal Group giving the client not less than Zero calendar days written notice; or
 - 3.1.2 by the client giving Narwhal Group not less than thirty calendar days written notice expiring at the end of the Minimum Term or at the end of any subsequent Renewal Period as appropriate; or
 - 3.1.3 in accordance with clause 16 (Termination) of this Contract.

4. Narwhal Group's Obligations

- 4.1 Narwhal Group shall:
- 4.1.1 provide the Services with reasonable skill and care, commensurate with the prevailing industry standards of the specific Service requested and in accordance with the Scope of Works and the Contract;
 - 4.1.2 provide campaign reporting and other information to Client via email (or such other method agreed by Client);
 - 4.1.3 act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the scope of the Services, as defined in these Conditions;
 - 4.1.4 be entitled to perform any of the obligations undertaken by it through suitably qualified and skilled sub-contractors. Any act or omission of such sub-contractor shall, for the purposes of the Contract, be deemed to be an act or omission of Narwhal Group;
 - 4.1.5 use all reasonable endeavours to accommodate any reasonable changes in the scope contained within the Scope of Works which may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees which may be due as a result of such changes.
- 4.2 Time of performance of the Services is not of the essence. Narwhal Group shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 4.3 Narwhal Group shall not be liable for any delay or failure of performance caused by the Client's failure to provide Narwhal Group with adequate instructions for performance or otherwise relating to the Services or Force Majeure.

5. Lead Generation Services

- 5.1 Narwhal Group shall supply the Leads to the Client via agreed transfer protocol of API or encrypted data transfer, in accordance with the Client's requirements set out in the Scope of Works.
- 5.2 Leads sent to the email address provided by the Client (until Narwhal Group are notified of any other email address) will be deemed to have been delivered to the Client whether actually received or not. Narwhal Group will not be liable for any losses resulting from Leads sent successfully to the correct email address but are rejected or filtered due to spam/junk folders by the Client's email provider.
- 5.3 Narwhal Group will not sell on, manipulate, process or otherwise interfere with the data captured for the Client in any way other than to design the marketing activity to generate and capture leads for the Client. The captured data will therefore be fully owned and controlled by the Client.
- 5.4 Narwhal Group does not warrant that the data provided in any Lead is suitable for the business purpose for which it is being purchased and/or that it would result in sales/generation of business for the Client. Narwhal Group is responsible for generating the data per the Scope of Works and the Order. For the avoidance of doubt, it is the Client's responsibility to ensure the suitability of the data and the effectiveness of the same for the business generation/marketing plans of the Client.

5.5 Narwhal Group warrants that:

- 5.5.1 each of the relevant individuals has provided his or her consent pursuant to the Data Protection Act 1998 permitting the use of personal data contained within the Leads as contemplated in this Contract by registering at the relevant online registration page at such URL or advertising platforms (such as Facebook or Instagram) as Narwhal Group shall advise from time to time; and
- 5.5.2 the Leads shall not be registered with the Telephone Preference Service, Fax Preference Service or Mail Preference Service.

5.6 A Client may give notice to Narwhal Group to temporarily suspend all or part of the lead generation service in any Renewal Period by providing 30 days' notice in writing. The Client shall pay for the Services carried out up to the date of suspension and shall pay Narwhal Group's reasonable and unavoidable costs in complying with the suspension request. The Client may request a resumption of the lead generation service by providing 48 hours' notice in writing to Narwhal Group.

5.7 In the event the Contract is terminated by either party as a result of the Client's request for a suspension, the Client shall indemnify Narwhal Group against any costs, damages, loss (including loss of profit incurred by Narwhal Group), claims or proceedings arising out the suspension and termination of the Contract.

5.8 Narwhal Group shall give a written guarantee as to price and for the numbers of Leads generated. Leads will be replaced for free if the Client discovers within 48 hours of the provision of the Leads that:

- 5.8.1 there is an invalid phone number;
- 5.8.2 there is duplicate data;
- 5.8.3 the data is false; and
- 5.8.4 the data is hoax data

For the avoidance of doubt this will not include Leads which have been validly provided and the person(s) contacted via the Lead deny submitting their data to Narwhal Group.

5.9 Leads will not be replaced for free by Narwhal Group where a prospect has submitted their information but simply decides not to answer or return any attempts at contact made by the Client. A Lead with which the Client is unable to make contact or who changes their mind about speaking with the Client after submitting the form does not qualify for free replacement data.

6. Client's Obligations

6.1 The Client shall:

- 6.1.1 pay all Fees and additional charges in accordance with this Contract;
- 6.1.2 ensure that Narwhal Group has unrestricted access to such electronic systems and materials, and promptly provide Narwhal Group with all assistance, directions, instructions or information, reasonably required by Narwhal Group to perform the Services;
- 6.1.3 provide timely updates on any information relevant to the Services. Any delay in the Services resulting from the Client's failure to comply with this provision shall not be the responsibility or fault of Narwhal Group;

6.2 With regard to a Client's Website:

- 6.2.1 the Client shall ensure that carries out in relation to its website:
 - 6.2.1.1 regular maintenance;
 - 6.2.1.2 monthly backups; and
 - 6.2.1.3 payments to its website hosting and maintenance provider where applicable to ensure compliance with clauses 6.2.1.1 and 6.2.1.2 above.
- 6.2.2 the Client hereby warrants and represents that its Website and use of the Services for the marketing of products and services of the Client shall be for legitimate business purposes, in compliance with all applicable laws and regulations, and that Client has obtained all necessary approvals, consents and permissions from any relevant authority or third party.
- 6.2.3 the Client accepts sole responsibility for all content and information provided to Narwhal Group and warrants and represents the accuracy and completeness of such information.

- 6.3 Narwhal Group is an online marketing agency and may rely, subject to the Client's prior written approval and consent, on third parties to perform the Services. Unless otherwise provided for in these Conditions or in the Scope of Works, Narwhal Group is not responsible for the performance of such services by third parties.
- 6.4 With regard to Leads:
- 6.4.1 the Client shall provide information to Narwhal Group on a daily basis in terms of lead quality and volume;
 - 6.4.2 the Client warrants that it is regulated by the Financial Services Authority (or such other relevant regulatory body) to utilise the Leads generated by Narwhal Group in the ordinary course of its business and shall indemnify and keep Narwhal Group indemnified against all losses, costs, damages, claims and expenses arising as result of a breach of this warranty;
 - 6.4.3 Leads provided to the Client are for the Clients sole use. The Client agrees to reply to the Leads in a timely manner (i.e. within 72 hours) and process the Leads with care, duty and professionalism and full disclosure to the prospect;
 - 6.4.4 the Client hereby indemnifies and shall keep indemnified Narwhal Group for any and all loss, costs, liabilities and expenses as may be incurred by Narwhal Group directly or indirectly because of any misuse of the Leads or any part thereof.

7. Fees, Invoicing and Payment

- 7.1 The fees payable for the Services shall be as set out in the Scope of Works or where no such provision is set out, shall be calculated in accordance with Narwhal Group's scale of charges in force from time to time (the **Fees**).
- 7.2 The fees are exclusive of:
- 7.2.1 VAT (or equivalent sales tax). The Client shall pay any applicable VAT to Narwhal Group on receipt of a valid VAT invoice.
 - 7.2.2 out of pocket expenses (which are to be agreed in advance by the parties);
 - 7.2.3 the provision of the Services in languages other than English;
 - 7.2.4 surcharges for payment methods, taxes and duties which shall be charged in addition to Narwhal Group's standard Fees.
- 7.3 Narwhal Group shall invoice the Client for the Services in accordance with the Scope of Work.
- 7.4 The Client shall:
- 7.4.1 pay all invoices in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice or in line with the payment terms detailed in the proposal, whichever is less;
 - 7.4.2 pay all invoices to the bank account nominated by Narwhal Group via the agreed payment method, either BACs, credit or debit card or a payment processing provider such as Stripe or Go Cardless (**Payment Providers**); and
 - 7.4.3 the Client warrants and represents that where it pays the Fees by credit card, debit card or a Payment Provider that there are sufficient funds on any credit card, debit card or bank account registered with Narwhal Group to pay for all Fees and any charges payable under this Contract.
- 7.5 Where payment is to be taken via a Payment Provider, the relevant Payment Provider's terms of service shall apply to this Contract and the Client agrees to be bound by those terms as may be modified by the Payment Provider from time to time. As a condition of Narwhal Group enabling payment to be taken via a Payment Provider, the Client shall provide to Narwhal Group accurate and complete information related to the Client's use of the payment processing services provided by the Payment Provider. The Client further gives permission to Narwhal Group (and the Payment Provider) to charge your on file bank account, credit card, debit card or other approved method of payment for the Fees.
- 7.6 Time of payment is of the essence. Where sums are due under these Conditions are not paid in full by the due date:
- 7.6.1 Narwhal Group may suspend all or any of its obligations under these Conditions until the payment is received after giving at least 7 days' notice to the Client of its intention to suspend with reasons. Any period of suspension will entitle Narwhal Group to any reasonable costs it incurs as well as an extension of time for completion of the Services;
 - 7.6.2 Narwhal Group may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of the Bank of England from time to time in force, and

- 7.6.3 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 7.7 Narwhal Group may increase the Fees at any time by giving the Client not less than 15 Business Days' notice in writing provided that the increase does not exceed 5% of the Fees in effect immediately prior to the increase.
- 7.8 Notwithstanding clause 7.7, Narwhal Group may increase the Fees with immediate effect by written notice to the Client where there is an increase in the direct cost to Narwhal Group of supplying the relevant Services which exceeds 5% and which is due to any factor beyond the control of Narwhal Group .

8. Intellectual Property

- 8.1 Narwhal Group shall retain ownership of any and all Intellectual Property Rights that may subsist in anything produced by Narwhal Group in the course of providing the Services including Leads.
- 8.2 In consideration of payment for the Services, Narwhal Group grants to the Client a non- exclusive transferable worldwide licence to use for the purposes of the Services, the Intellectual Property Rights in the Services and all other materials created by Narwhal Group pursuant to these Conditions. For the avoidance of the doubt, the Client may not reproduce, modify or sell to any third party the content of the Services and any other materials created by Narwhal Group .
- 8.3 Narwhal Group acknowledges that the Client owns all Intellectual Property Rights relating to the Website created or provided by the Client in connection with the Services. The Client grants a non-exclusive non-transferable worldwide licence to Narwhal Group for all purposes relating to the performance of the Services relating to the Website.
- 8.4 In complying with the provisions of clause 8.2, Narwhal Group shall undertake to execute any such agreements and perform any such actions that may be necessary to put such licences into effect and shall exclusively bear any costs associated therewith.
- 8.5 Except as expressly agreed above, no Intellectual Property Rights of either party are transferred or licensed as a result of these Conditions.
- 8.6 Subject to the foregoing, each party shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with this Contract provided always that such skills, techniques or know-how do not infringe the other party's Intellectual Property Rights now or in the future or disclose or breach the confidentiality of the other party's Confidential Information.
- 8.7 Narwhal Group shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.
- 8.8 Narwhal Group shall be entitled to refer to performance of the Services for the Client and include the Client's trademarks in Narwhal Group 's marketing activities if the Client gives its express consent in writing (such consent not to be unreasonably withheld).

9. Data Privacy

- 9.1 Each party warrants and represents that it has adopted and implements a privacy policy in compliance with the requirements under the Data Protection Act 2018 in respect of all personal data provided to the other party in connection with the Services or otherwise under this Contract. Without limitation, all necessary consent has been obtained by the Client from individuals for the purposes of performing the Services.
- 9.2 Narwhal Group will engage third parties to perform specific parts of the Services, including paid campaigns on third party platforms (**Third Parties**). For specific information regarding the use of third parties, please refer to Narwhal Group 's privacy notice. Specific terms and conditions may apply to the products and services supplied by Third Parties.
- 9.3 Narwhal Group is not responsible for any information transmitted by Third Parties or liable for any reliance the Client makes upon the information or statements conveyed by Third Parties (or in relation to dealings with Third Parties), nor is Narwhal Group responsible for the accuracy of any advertisements or marketing provided by Third Parties.

10. Confidentiality

- 10.1 Each party undertakes that it shall keep confidential all Confidential Information and that it shall not use or disclose the other party's Confidential Information to any person, except as permitted by clause 10.2.

10.2 A party may:

- 10.2.1 subject to clause 10.5, disclose any Confidential Information to any of its employees, officers, representatives or advisers (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Contract, provided that such party ensures that each Representative to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 10 as if it were a party;
- 10.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including any securities exchange) or any other authority of competent jurisdiction to be disclosed; and
- 10.2.3 subject to clause 10.5, use Confidential Information only to perform any obligations under this Contract.

10.3 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.

10.4 The Client shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

10.5 To the extent any Confidential Information is protected data (as would be processed in accordance with clause 9.1) such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any of the provisions of clause 9.1.

11. Anti-bribery

11.1 For the purposes of this clause 10 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.

11.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and ensure that:

- 11.2.1 all of that party's personnel;
- 11.2.2 all others associated with that party; and
- 11.2.3 all of that party's sub-contractors; involved in performing the Contract so comply.

11.3 Without limitation to clause 10.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

11.4 The Client shall immediately notify Narwhal Group as soon as it becomes aware of a breach by the Client of any of the requirements in this clause 10.

12. Dispute Resolution

12.1 If any dispute arises between the Client and Narwhal Group in connection with this Contract (Dispute), then either party may notify the other of the Dispute with a notice (Dispute Notice) which: (a) includes or is accompanied by full and detailed particulars of the Dispute; and (b) is delivered within 14 days of the circumstances giving rise to the Dispute first occurring.

12.2 Within 14 days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of the Client and Narwhal Group must meet to discuss and seek to resolve the Dispute.

12.3 If the Dispute has not been resolved within 14 days of the first meeting of the representatives, then the matter shall be referred to the managing directors (or persons of equivalent seniority). The managing directors (or equivalent) will meet within 7 days to discuss the dispute and attempt to resolve it.

12.4 If the dispute has not been resolved within 14 days of the first meeting of the managing directors (or equivalent) under clause 12.3, then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

12.5 A party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause, provided that nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

- 12.6 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Contract and any related agreements save for where Narwhal Group have suspended the Services in accordance with clause 5.6. Where the Contract has been suspended in accordance with clause 5.6 Narwhal Group will not be required perform the Services until payment has been made in accordance and/or the Dispute is resolved.

13. Force Majeure

- 13.1 Neither party shall be liable for any failure or delay to performance of obligations under this Contract if such failure or delay results from any cause that is beyond the reasonable control of that Party including power failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.
- 13.2 In the event that any party cannot perform their obligations hereunder as a result of force majeure for a continuous period of 1 month, the other party may at its discretion terminate this Contract by written notice at the end of that period.

14. Indemnity and insurance

- 14.1 The Client shall indemnify, and keep indemnified, Narwhal Group from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by Narwhal Group as a result of or in connection with the Client's breach of any of the Client's obligations under the Contract.
- 14.2 The Client shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under these Conditions. On request, the Client shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Client shall on request assign to Narwhal Group Ltd the benefit of such insurance.

15. Liability

- 15.1 Subject always to the Scope of Works, whilst Narwhal Group does not guarantee traffic to the Website or any specific results from the Services it does undertake to use its best endeavours to maximise the results of the Services for the benefit of the Client. This Contract is not a service level agreement.
- 15.2 To the extent permitted by law, by accepting the Services, the Client acknowledges and represents that the Client is not a consumer and unless otherwise provided for within these Conditions or in the Scope of Works, no refund is payable in any circumstances whatsoever.
- 15.3 Nothing in the Services constitutes any recommendations or advice from Narwhal Group regarding the marketing or promotion of the Client's products or services and any marketing campaign shall remain the Client's commercial decision in its absolute discretion.
- 15.4 In no circumstances will either party be liable for any consequential or indirect damages, loss of profits, or any other similar or analogous loss resulting from the provisions of the Services whether based on warranty, contract, tort, negligence, in equity or any other legal theory and each parties total maximum liability to the other, for a breach of these Conditions, including any breach of any indemnity, shall not exceed the Fee.
- 15.5 The Client shall indemnify Narwhal Group for, and hold it harmless against any loss, damage, costs, expenses, liability, deduction, contribution, assessment or claim (including reasonable legal costs) arising in connection with any access to the Website.
- 15.6 Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Contract.
- 15.7 Nothing in this Contract shall limit or exclude the liability of either party for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation.

16. Termination

- 16.1 Without prejudice to clause 3.1 above, either party may immediately terminate the Contract by giving written notice to the other party if:
- 16.1.1 any sum owing to that party by the other party under any of the provisions of the Contract is not paid within 14 Business Days of the due date for payment;

- 16.1.2 the other party commits any other breach of any of the provisions of the Contract and, if the breach is capable of remedy, fails to remedy it within 14 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 16.1.3 an encumbrancer takes possession, or where the other party is a company, a receiver is appointed, of any of the property or assets of that other party;
 - 16.1.4 the other party makes any voluntary arrangement with its creditors or being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 16.1.5 the other party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or reconstruction and in such a manner that Narwhal Group resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under the Contract);
 - 16.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other party;
 - 16.1.7 that other party ceases, or threatens to cease, to carry on business; or
 - 16.1.8 control of that other party is acquired by any person or connected persons not having control of that other Party on the date of the Contract. For the purposes of this Clause 16, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 16.2 For the purposes of clause 16.1.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 16.3 The rights to terminate the Contract shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 16.4 On termination of this Contract for any reason:
- 16.4.1 Narwhal Group shall immediately stop the performance of all Services unless expressly requested otherwise in relation to all or part of the Services by the Client in writing;
 - 16.4.2 Narwhal Group shall promptly invoice the Client for all Services performed but not yet invoiced;
 - 16.4.3 without prejudice to any additional obligations under Narwhal Group’s privacy notice, the parties shall within five Business Days return any materials of the other party then in its possession or control;
 - 16.4.4 all rights granted to the Client under this Contract shall immediately cease; and
 - 16.4.5 the Client shall ensure it removes any website reporting or software access previously provided to Narwhal Group.

17. Electronic Communication and Notices

- 17.1 In this clause, ‘electronic communication’ has the meaning given to that term in Electronic Communications Act 2000 and the Electronic Signatures Regulations 2002.
- 17.2 The parties acknowledge and agree that this Contract can be executed (including digitally or by counterpart) and conveyed by electronic communication. A consent, notice or communication under this Contract is effective if conveyed by electronic communication and must be sent to the parties’ contact details as specified in the Scope of Works.
- 17.3 Each party may be required to provide an original of such agreement or counterpart as soon as reasonably possible following request.

18. General

- 18.1 Relationship. The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party’s behalf.
- 18.2 Set off. Narwhal Group shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Client under the Contract. The Client shall pay all sums that it owes to Narwhal Group under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

- 18.3 Assignment. The Client may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without Narwhal Group's prior written consent, such consent not to be unreasonably withheld or delayed.
- 18.4 Variation. Narwhal Group may from time to time change these Conditions without giving the Client notice, but Narwhal Group will use its reasonable endeavours to inform the Client as soon as is reasonably possible of any such changes.
- 18.5 Entire agreement. The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract. Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 18.6 Third party rights. A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce this Contract, provided that this clause does not affect a right or remedy of a person which otherwise exists or is available.
- 18.7 Waiver. No clause of this Contract will be deemed waived and no breach excused unless such waiver or consent is provided in writing. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.
- 18.8 Further Action. Each party must do anything reasonably necessary (including executing agreements and documents) to give full effect to this Contract, including in connection with any claim or proceedings brought against a party as a result of any breach of this Contract.
- 18.9 Liability for Expenses. Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Contract.
- 18.10 Inconsistency. If this Contract is inconsistent with any other preceding document or agreement between the parties, the Scope of Works prevails to the extent of the inconsistency.
- 18.11 Counterparts. This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- 18.12 Severability. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected. If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 18.13 Governing Law and jurisdiction: The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).