

# STANDARD TERMS AND CONDITIONS

## 1. INTELLECTUAL PROPERTY RIGHTS

(a) All Intellectual Property Rights in and legal ownership of Criterion's own proprietary materials, documents and other property used by it in providing the Services shall be owned by Criterion, to include amongst other matters all applications, assessment tools, tests and survey designs, algorithms and meta-data.

(b) Unless Criterion agrees in writing to the contrary, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Criterion, provided always that the Client shall, subject to its compliance with these terms, be granted a non-exclusive, perpetual licence to use those Intellectual Property Rights for the purposes envisaged by the Client and Criterion when the Contract was entered into.

## 2. CONFIDENTIALITY

(a) The Client shall keep in strict confidence all of Criterion's technical or commercial know-how, processes, solutions and techniques which are of a confidential nature and have been disclosed to the Client by Criterion, its employees, agents or subcontractors. The Client shall not use the same other than for the purposes envisaged by the Contract.

(b) Except with the prior written consent of Criterion, the Client shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of fulfilling the terms of the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Client may also disclose such of Criterion's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of the Contract.

(c) The Client shall ensure that materials provided by Criterion under the Contract are not scanned, photocopied or otherwise reproduced by any person without the prior written consent of Criterion.

## 3. LIMITATION OF LIABILITY:

**The client's attention is particularly drawn to this clause**

(a) Nothing in these terms and conditions shall limit or exclude Criterion's liability for:

1. Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors
2. Fraud or fraudulent misrepresentation
3. Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession)
4. Breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession)

(b) Subject to clause 6 (a):

1. Since Criterion has no practical alternative but to host its online Services on secure third party servers and provide access to some of its Services via the Internet, the Client accepts that the provision of the Services may be subject to outages of those servers or the Internet over which Criterion cannot be expected to have any control. Criterion is conscientious and uses reasonable care and skill in the selection of its third party suppliers and the security of its

systems, but its procedures in this respect and its relevant policies of insurance must be recognised as being those that might be expected to be maintained by a small to medium sized enterprise

2. Criterion maintains strict and appropriate back-up procedures and these provide for the back-up on a regular basis of all project data to which Criterion has access via its systems. However, it is a condition of the contract that the Client shall itself back-up all data which it is possible for it to back-up (whether in electronic or hard-copy form or both) including amongst other matters Client respondent data, comprising respondent personal data, respondent scores and results, and respondent reports. In addition (but without limitation), the Client should maintain its own back-ups of user settings, specific user configurations, assessment designs and other elements of the Services that are particular to the Client and/or the Contract

3. Criterion shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of data, loss of profit, or any indirect or consequential loss arising under or in connection with the Contract, including amongst other things from the Client's failure to follow the back-up requirements in sub-clause 6(b)2 above, loss of files, databases, client data, respondent data, templates or questionnaires, unauthorised access, delays to campaigns or projects caused by failure of servers or the Internet or difficulties with interfacing between the software programs of Criterion and third parties

4. Criterion's Data Protection Policy is available upon request. In accordance with the provisions of that Policy, Criterion deletes Client data 12 months from the date of its collection. Criterion restricts access to confidential Client data to persons within Criterion who have need to access that data for purposes related to the Contract

5. Criterion's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the lower of (i) £25,000 and (ii) the aggregate amount of fees paid by the Client to Criterion in the 12 months prior to the date of the act or omission giving rise to the claim

(c) Criterion will provide the Services using reasonable care and skill. Any claims in relation to the Services must be notified to Criterion in writing not more than 6 months after conclusion of delivery of the Services. Except as provided in this clause 6, Criterion shall have no liability to the

Client in respect of any failure of the Services to comply with the warranty set out in this sub-clause (c).

(d) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

(e) This clause 6 shall survive termination of the Contract.

(f) The Client shall indemnify Criterion against any liability that Criterion may incur as a result of any negligent or fraudulent act or omission on the part of the Client, its employees or agents in connection with the Services.

(g) All products are supplied as described on the Criterion website from time to time.

(h) Any dates quoted for delivery of products or services are approximate only, and the time of delivery is not of the essence. Criterion shall not be liable for any delay in delivery of any products or services that is caused by a Force Majeure Event or the Client's failure to provide Criterion with adequate delivery instructions.

(i) If Criterion fails to deliver the products, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the products.

(j) Delivery of the products shall be completed when Criterion places them in the hands of its delivery agents. Criterion is not responsible for delays or losses caused by its delivery agents.

(k) Criterion warrants that on delivery and for a period of 6 months from the date of delivery (warranty period), the physical products shall be free from material defects in design, material and workmanship.

(l) Criterion shall accept returns of unused physical products within 14 days of the order date, provided all products are received in original packaging and are undamaged. Clients are responsible for the costs of returning the products to Criterion.

(m) If the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the products do not comply with the warranty set out in sub-clause.

(n) and the Client (if asked to do so by Criterion) returns such products to Criterion's place of business at the Client's cost, Criterion shall, at its option, repair or replace the defective products, or refund the price of the defective products in full.

(o) Except as provided in this clause 6, Criterion shall have no liability to the Client in respect of any failure of the physical products to comply with the warranty set out in sub-clause (k).

(p) The risk in physical products shall pass to the Client on delivery. Title to those products shall not pass to the Client until Criterion receives payment in full (in cash or cleared funds) for the products and any other products or Services that Criterion has supplied to the Client, in which case title to the products shall pass at the time of payment of all such sums.

## **4. TERMINATION AND SUSPENSION**

(a) Without limiting its other rights or remedies, Criterion may terminate the Contract with immediate effect by giving written notice to the Client if the Client commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 21 days after receipt of notice in writing to do so.

(b) Without limiting its other rights or remedies, Criterion may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

(c) Without limiting its other rights or remedies, Criterion may suspend the supply of the Services or all further deliveries of products under the Contract or any other contract between the Client and Criterion if the Client fails to pay any amount due under the Contract on the due date for payment.

(d) On termination of the Contract for any reason:

1. The Client shall immediately pay to Criterion all of Criterion's outstanding unpaid invoices and interest and, in respect of products or Services supplied but for which no invoice has yet been submitted, Criterion shall submit an invoice, which shall be payable by the Client immediately on receipt
2. The Client shall return all of the Criterion proprietary materials which have not been fully paid for
3. The accrued rights and remedies of the parties as at termination shall not be affected; and
4. Clauses which expressly or by implication have effect after termination shall continue in full force and effect

## 5. FORCE MAJEURE

(a) For the purposes of these terms and conditions, Force Majeure Event means an event beyond the reasonable control of Criterion including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Criterion or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, technical failure of the Internet, third party servers and other technological elements beyond Criterion's reasonable control, fire, flood, storm or default of suppliers or subcontractors.

(b) Criterion shall not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents Criterion from providing any of the Services and/or products for more than 12 weeks, Criterion shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

## 6. GENERAL

(a) Assignment and Sub-contracting. Criterion may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract.

(b) Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

(c) Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

(d) Nothing in the Contract is intended to, or shall be deemed to, establish any legal partnership or joint venture between Criterion and the Client, nor constitute either of them as the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

(e) A person who is not a party to the Contract shall not have any rights to enforce its terms. The Client are fully responsible for any claim made by any user, candidate, customer or third party to the Client.

(f) Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service or by commercial courier (but not by e-mail). A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address described in the first sentence of this sub-clause 9(f); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(g) Governing law. These terms and conditions and of the Contract and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non- contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

(h) Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms and conditions and of the Contract or their subject matter or formation (including non- contractual disputes or claims).