

The Supplier is a distributor of Prolateral in respect of the Profilter Services. Supplier wishes to supply, and the Customer wishes to purchase, the Profilter Services upon the terms and conditions of the Agreement.

It is agreed as follows:

1. Definitions

In the Agreement the following definitions shall have the following meanings:

"Additional Services" any services to be provided by Supplier upon Customer's request in addition to the Profilter Services.

"Agreement" these Terms together with any Order Form referable to these Terms.

"Supplier" Polar Communications whose registered address is St George's House, George Street, , Huntingdon, Cambs, PE29 3GH, UK.

"Prolateral" Prolateral Consulting Limited (company registration number 4676923) whose registered office address is 46 – 48 Rothersey Road, Luton, Bedfordshire, LU1 1QZ.

"Profilter Service" is an email filtering service provided by "Prolateral" under licence to Supplier.

"Change Request" a request for a change made by Customer or Supplier.

"Charges" the charges to be paid by Customer to Supplier in respect of the Profilter Services (including without limitation those charges set out in an Order Form).

"Customer" the party named as such in an Order Form.

"Customer Facilities" all hardware and software, ancillary equipment, telecommunications, storage and other facilities owned or controlled by Customer.

"Customer Representative" any person named as such in an Order Form or such other person notified by Customer to Supplier in writing to act as Customer's representative for the purpose of the Agreement.

"Data" the data (which includes, without limitation, the Customer's (including its employees') emails) in any form of media stored upon or produced by Customer Facilities to which Customer grants Supplier and Prolateral access for the purpose of supplying the Profilter Services.

"Documentation" any specifications, user instructions and other literature supplied to Customer.

"Deliverables" any report, output, result or product of the Profilter Services in any form of media and howsoever arising, excluding Customer's (including its employees') emails.

"IP Right" any copyright, patent, registered design, trademark or other intellectual property right (or applications therefor) of whatever nature subsisting anywhere in the world.

"Licence" means the licence granted by Supplier as a partner of Prolateral to Customer for the right to use Deliverables.

"Order Form" (online signup forms) the order form referable to the Agreement which sets out Customer's offer to purchase the Profilter Services.

"Rates" Supplier's prevailing rates for requested goods and services which are available upon written request to Supplier.

"Terms" these Email Filtering Terms.

1.2 In the Agreement (except where the context otherwise requires):-

1.2.1 any reference to a clause is to the relevant clause of the Agreement and any reference to a sub clause or para-graph is to the relevant sub clause or paragraph of the clause in which it appears;

1.2.2 the Clause headings are included for convenience only and shall not affect the interpretation of the Agreement;

1.2.3 use of the singular includes the plural and vice versa;

1.2.4 use of any gender includes the other genders;

1.2.5 references to statutes, any statutory instrument, regulation or order shall be construed as a reference to such statute, statutory instrument, regulation or order as amended or re-enacted from time to time.

1.3 In the event of conflict between the Order Form and these Terms, these Terms will prevail over the Order Form.

2. Application of Terms

2.1 The Order Form submitted by Customer will be deemed to be an offer by Customer to purchase the Profilter Services subject to these Terms. Customer's offer will be accepted upon Supplier sending written notification to Customer confirming that Customer's Order Form has been accepted.

2.2 No terms or conditions endorsed on, delivered with or contained in Customer's purchase order, confirmation of order or other document will form part of the Agreement simply as a result of the document being referred to in the Agreement.

3. Duration

3.1 The Agreement shall endure for the period set out in an Order Form or otherwise (if no such period is set out in an Order Form) for a minimum period of 12 months and thereafter for successive 12 month periods subject in each case to:

3.1.1 agreement of applicable terms for each renewed 12 month period; and

3.1.2 termination by either party giving not less than 60 days prior written notice to coincide with the end of any 12 month period.

3.2 For the avoidance of doubt Supplier may invoice for Charges incurred by the Customer during any notice period.

4. Scope of Agreement

4.1 In consideration of the payment by Customer of the Charges and any other sums due from Customer, Supplier shall supply the Profilter Services.

4.2 Supplier shall carry out the obligations set out in clause 4.1 with reasonable skill and care and in accordance with an Order Form.

4.3 Unless expressly agreed in writing by Supplier time for performance of any obligation under the Agreement shall not be of the essence.

4.4 Customer acknowledges that Supplier will supply the Profilter Services at the request of Customer and that it is Customer's responsibility to determine whether the Profilter Services are suitable for its requirements.

4.5 The supply of the Profilter Services is subject to Customer at all times discharging its obligations under the Agreement.

5. Customer's Obligations

Customer shall:

5.1.1 make available to Supplier and Prolateral free of charge such Customer Facilities, computer and communications facilities, office facilities and services and suitable office space as requested;

5.1.2 ensure that its employees or other independent contractors co-operate reasonably with Supplier and Prolateral (including their employees);

5.1.3 promptly furnish Supplier and Prolateral with such Data, information and documents as requested by Supplier and/ or Prolateral;

5.1.4 pay all Charges and Rates properly invoiced by Supplier;

5.1.5 take all reasonable steps to ensure the health and safety of Supplier and Prolateral employees, agents or independent contractors subject to such employees, agents or independent contractors complying with any Customer health and safety policy notified in writing by Customer; and

5.1.6 ensure that any IP Rights which Supplier or Prolateral is required to use or modify in order to supply Profilter Services are either proprietary to Customer or properly licensed to Customer and that Supplier and Prolateral are properly authorised to use or modify the IP Rights. Customer shall indemnify and hold harmless Supplier and Prolateral in respect of any costs, expenses, damages, third party actions or claims arising out of any actual or alleged infringement of third party IP Rights by Prolateral, Supplier and/ or Customer.

6. Personnel

6.1 Supplier shall ensure that the personnel engaged in supplying the Profilter Services have the necessary skills, expertise and diligence to undertake such work and will conform to the professional standards generally observed in the computer industry for similar services.

7. Customer Facilities

7.1 Upon a date to be notified by Supplier, Supplier and/ or Prolateral may inspect Customer Facilities in accordance with the terms of the Agreement.

7.2 Supplier shall indicate to Customer in writing whether Customer Facilities are suitable for the purpose of supplying the Profilter Services and, if Customer Facilities are not suitable, the necessary steps to be taken by Customer (at Customer's expense) to make Customer Facilities suitable.

7.3 Customer shall use reasonable endeavours to complete any work notified by Supplier within seven (7) days of notification by Supplier and in particular to reflect any requirements specified by Supplier.

7.4 Supplier and/ or Prolateral may perform repeat inspections (and the procedure outlined in this clause 7) until Supplier is satisfied that Customer Facilities are suitable for the purpose of the supply of the Profilter Services.

8. Data/ Deliverables

8.1 Customer enables Supplier and Prolateral to access Data at Customer's own risk and Supplier shall not be liable for any loss or damage to Data. Customer acknowledges that Supplier and/ or Prolateral may disseminate, split, sectionalise, annotate, highlight, mark or otherwise treat Data in the course of supplying the Profilter Services.

8.2 Customer remains at all times responsible for the accuracy of Data and Supplier assumes no responsibility for indicating errors or omissions.

8.3 Customer warrants that:

8.3.1 the use of Data by Supplier and/ or Prolateral will not infringe any third party IP Right; and

8.3.2 Customer has obtained all necessary consent to supply Data to Supplier and/ or Prolateral as required by applicable law.

8.4 Supplier shall deliver/ transmit the Deliverables (or part of the Deliverables) to Customer and notify Customer of delivery/ transmission. Unless Customer notifies Supplier in writing of a material fault within the Deliverables (or part of the Deliverables) within 7 days following such delivery/ transmission Customer shall be deemed to have accepted the Deliverables (or part of the Deliverables).

8.5 Customer agrees that 7 days is a reasonable period for the purpose of inspecting the Deliverables (or part of the Deliverables) and testing the same for material faults.

9. Change Control

9.1 If either party identifies a requirement for a change to the Profilter Services it shall send a Change Request to the other party detailing the change requirements.

9.2 If sent by Supplier, the Change Request shall state the effect such a change shall have upon the Profilter Services and Charges. If sent by Customer, the receipt of the Change Request by Supplier will

constitute a request to Supplier to state in writing the effect such a change shall have upon the Profilter Services and Charges. Supplier shall use reasonable endeavours to supply such details within seven (7) working days from receipt of a Change Request.

9.3 Where a change to the Charges is required the additional cost shall be calculated using the Rates. The parties will then decide whether or not to implement the change. If the change is implemented, the amended services and charges (as applicable) shall then become the Profilter Services and Charges for the purpose of the Agreement.

10. Licence

10.1 Upon payment in full of any due Charges, Supplier grants to Customer who accepts a perpetual non-exclusive, non-transferable Licence to use Deliverables for its own internal business purposes and in accordance with any licence restrictions set out in this clause 10 and/ or in an Order Form. Customer may not disclose or make available Deliverables to any other entity whatsoever nor permit others to use it outside the scope of such Licence.

10.2 Customer agrees that breach of this clause 10 may cause loss and damage to Supplier and its licensor (namely Prolateral), and that Supplier may terminate the Licence forthwith upon any breach by Customer of the terms of the Agreement (in which case) Customer shall return all Deliverables (including copies) to Supplier to include erasure of the same from computer memory. The provisions of this clause 10 will survive the expiry or termination of the Agreement.

11. Charges

11.1 In consideration of Supplier supplying the Profilter Services, Customer shall pay to Supplier the Charges specified in an Order Form and subject to the terms set out in clause 11.

11.2 Additional Services supplied by Supplier at Customer's request shall be charged in accordance with Rates calculated upon a time and materials basis unless otherwise agreed by the parties in writing.

12. Terms of Payment

12.1 The Charges, Rates and other sums are expressed exclusive of all duties and taxes including without limitation value added tax which shall be paid by Customer at the rate and in the manner provided by the law governing the Agreement.

12.2 Payment of sums due from Customer to Supplier shall be made within thirty (30) days of the receipt of an invoice from Supplier. All payments hereunder shall be made in pounds sterling.

12.3 In the event that Customer fails to pay any sum by the due date Supplier reserves the right to charge interest on the outstanding amount in accordance with The Late Payment of Commercial Debts Regulations 2002.

12.4 Notwithstanding clause 12.3, if Customer fails to pay any sum by the due date Supplier may at its option and without prejudice to any other remedy at any time after payment has become due, terminate or suspend performance of the Agreement.

12.5 With effect from the beginning of each anniversary of the date of the Agreement Supplier may (upon 60 days written notice to Customer) vary Charges in effect during the previous year and shall notify such variation in writing to Customer.

12.6 If Supplier shall terminate the Agreement for any reason, any sums (including interest for the late payment) will immediately become payable in full.

13. IP Rights

13.1 Customer acknowledges that any and all of the IP Rights subsisting in or used in connection with the Profilter Services shall be and shall remain the sole property of Supplier, Prolateral or such other party as may be identified therein or thereon ("Owner") and Customer shall not at any time dispute such ownership.

13.2 In the event that new inventions, designs or processes evolve in performance of or as a result of the Agreement, Customer acknowledges that the same shall be the property of Supplier, Prolateral or any applicable Owner unless otherwise agreed in writing by Supplier.

14. Indemnities

14.1 Customer undertakes fully and effectively to indemnify and keep indemnified at all times Supplier and Prolateral against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by Supplier and/ or Prolateral directly or indirectly in respect of:

14.1.1 any breach by Customer of any of the provisions of the Agreement or of any law, code or regulation relating to the Agreement; and

14.1.2 work done in accordance with Customer's specifications involving infringement of any IP Rights.

15. Warranties and Liability

15.1 Except as expressly provided in the Agreement no warranty, condition, undertaking or term, expressed or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of any Deliverables, goods or Profilter Services provided hereunder will be assumed by Supplier and except as expressly provided in the Agreement all such warranties, conditions, undertaking and terms are hereby excluded.

15.2 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

15.3 The liability of Supplier in respect of breaches of the Agreement or of any other duty to Customer or for negligence in connection with the subject matter of the Agreement:

15.3.1 for all or any such matters arising before the date of the Agreement or during the initial period of 12 months following that date ("Initial Period") shall be limited to the aggregate annual value of Charges due to Supplier hereunder in the Initial Period;

15.3.2 for all or any such matters arising in any further period of 12 months after the Initial Period shall be limited to the aggregate annual value of Charges due to Supplier hereunder in that further period provided that the aggregate liability of Supplier for all matters referred to in clauses 15.3.1 and 15.3.2 whenever arising shall be limited to twice the value of payments due to Supplier hereunder in the Initial Period.

15.4 Subject always to clause 15.2, in no event shall either party be liable to the other for any of the following however and whenever arising:

15.4.1 loss of profits;

15.4.2 loss of business;

15.4.2 loss of revenue;

15.4.3 loss of data (including without limitation Data);

15.4.4 loss of goodwill;

15.4.5 loss of anticipated savings; and/ or

15.4.6 indirect or consequential loss or damage.

15.5 Each party agrees that the limitations of liability contained in this clause 15 have been considered and agreed between the parties in the context of the other provisions of the Agreement and satisfy the requirement of reasonableness within the meaning of sub-section 2(2) and Section 11 of the Unfair Contract Terms Act 1977.

15.6 The parties expressly agree that should any limitation or provision contained in the Agreement be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

16. Force Majeure

16.1 Neither party will be under any liability to the other for, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock outs and industrial disputes, fire, explosion, earthquake, acts of God, flood, drought, or bad weather or the requisitioning or other act or order by any Government department, council or other constituted body ("Force Majeure"), provided always that both parties will use all reasonable endeavours (but without an obligation to incur cost) to minimise the period of disruption caused by the Force Majeure.

17. Termination and Suspension

17.1 Either party may forthwith terminate the Agreement by written notice to the other if any of the following events occur:

17.1.1 If either party commits any breach of the terms or conditions of the Agreement and fails to remedy such breach within thirty (30) days after receiving written notice requiring remedy;

17.1.2 If either party becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has a receiver or manager appointed of the whole or substantially the whole of its undertakings or if the other party is unable to pay its debts in accordance with the law relating to the Agreement;

17.1.3 A Force Majeure continues for a period of more than 3 months.

17.2 Without prejudice to any right of termination either party shall be entitled by immediate notice to suspend performance of some or all of the Profilter Services specified in the Agreement upon the occurrence of circumstances specified in clause 17.1, and the Agreement will in any event be deemed suspended in the event of Force Majeure.

17.3 Termination or suspension of the Agreement will be without prejudice to any accrued rights or obligations of either party.

17.4 Upon termination by either party Supplier shall be entitled to charge Customer its reasonable transfer and set up charges including any such charges incurred by Supplier on transfer of the supply of services similar to the Profilter Services to a third party.

18. Confidential Information

18.1 All information, data, drawings, specifications, documentation, software listings, source or object code which either party may have imparted and may from time to time impart to the other party relating to the Agreement in whatever media is proprietary and confidential. The parties hereby agree that they shall use the same solely in accordance with the provisions of the Agreement and shall not at any time during or after expiry or termination of the Agreement disclose the same whether directly or indirectly to any third party without the prior written consent of the other party.

18.2 The foregoing provisions shall not prevent the disclosure or use by either party of any information which is or hereafter through no fault of that party becomes public knowledge or to the extent permitted by law or to professional advisers bound by professional duties of confidentiality.

19. Restrictive Covenant

19.1 Customer undertakes that (for a period of 6 months after the termination or expiry of the Agreement) it shall not solicit or entice away or engage any personnel of Supplier and/ or Prolateral or offer or cause to be offered any employment to any such personnel. If Customer breaches this restriction it shall pay to Supplier (in respect of Supplier personnel) and/ or Prolateral (in respect of Prolateral personnel) as compensation a sum equivalent to the annual salary paid to such personnel by Supplier/ Prolateral (as applicable).

20. Entire Agreement

20.1 The Agreement:

20.1.1 represents the whole agreement and understanding between the parties in respect of the matters referred to herein; and

20.1.2 shall, except in the case of fraud, override and no reliance shall be placed upon any other verbal or written representations, warranties or understandings in respect of the subject matter of the Agreement including, without limitation, any conflicting provisions of any terms of purchase notified by Customer.

20.2 The remedies available to the parties are exclusively those available under the Agreement.

20.3 The parties acknowledge that they have expressly considered and agreed the terms of this clause 20.

21. Data Protection

21.1 Supplier will process personal information ("Information") provided by Customer as defined in the Data Protection Act 1998 ("DPA") in accordance with applicable data protection law and this clause 21. Customer consents to Supplier using Information as follows:

21.1.1 Supplier will obtain, record, store and use Information as necessary to perform the Profilter Services including transfer of Information to employees, agents and third parties (including, without limitation, Prolateral) as required for this purpose.

21.1.2 Supplier may transfer its business assets (which include Information) on re-organisation, sale or merger of the whole or any part of its business.

21.1.3 Supplier reserves the right to process Information as required for marketing purposes, to obtain legal advice, comply with legal requirements, enforce or apply any agreements (including the Agreement) and protect the rights, property or safety of Supplier, its employees, clients, customers and others.

21.1.4 Supplier may transfer Information outside the European Economic Area for any of the purposes listed in this clause 21.

21.2 If Supplier intends to process Information other than as set out above Customer will receive notice and be given the opportunity to decline the processing.

22. General

22.1 No amendment to the Agreement shall be binding unless made in writing and signed by both Customer Representative and Supplier's authorised representative.

22.2 Customer shall not sub-contract, assign, charge or otherwise transfer to a third party any of its rights or obligations hereunder without the prior written consent of Supplier.

22.3 No waiver of any breach of the other party's obligations hereunder shall represent a waiver of the waiving party's rights hereunder or of any subsequent breach.

22.4 The parties respectively shall and shall procure that any other necessary party shall execute and do all such documents, acts and things as may reasonably be required on or subsequent to completion of the Agreement for securing each of the obligations of the parties under the Agreement.

22.5 Prolateral may enforce Supplier's rights under the Agreement against Customer in accordance with the Contracts (Rights of Third Parties) Act 1999.

22.6 Subject to clause 22.5, none of the provisions of the Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on a person who is not named as a party to the Agreement.

22.7 Any notice to effect suspension or termination of the whole or any part of the Agreement:

(i) shall be made in writing and either delivered personally or sent by first class recorded delivery to the party to whom the notice is addressed at its address as set out in the Agreement or such other address as one party may specify by notice in writing to the other;

(ii) in the absence of evidence of earlier receipt notice shall be deemed to have been duly given:

(a) if delivered personally, when left at the address referred to in clause 22.7 (i);

(b) if sent by first class recorded delivery, at the time recorded by the delivery agent.

22.8 For the avoidance of doubt electronic mail shall be deemed to be "writing" for the purpose of the Agreement but this shall not prejudice the express requirements for delivery of notices under clause 22.7.

22.9 The Agreement shall be binding on and shall continue for the benefit of the permitted successors and permitted assigns (as the case may be) of each of the parties hereto.

22.10 All provisions of the Agreement shall so far as they are capable of being performed and observed continue in full force and effect notwithstanding any expiry or earlier termination.

23. Applicable Law

23.1 The Agreement shall be governed by and construed in accordance with English law and each party to the Agreement submits to the exclusive jurisdiction of the English courts.

I accept the

terms & conditions: You must accept the terms to activate your account.