



Partner Agreement

Your appointment to distribute our Products and provide related services as a Swiftpage Partner and your right to participate in our Partner programme is conditional on your acceptance of and subject to the terms set out in this Agreement. You and we agree as follows:

1. What do the definitions and other terms mean?

1.1 In this Agreement the following expressions have the following meanings:

"Affiliate" in relation to any company, any holding company of that company or any subsidiary of any such holding company ("holding company" and "subsidiary" having the same meanings as are assigned to each of them by section 736 of the Companies Act 1985 (as amended));

"Agreement" this Swiftpage Partner Agreement including the Product Terms and any other documents expressly incorporated by reference in this Agreement;

"Brand Guidelines" Swiftpage's guidelines for Partners describing how Swiftpage's Mark and brand must be used, as published from time to time by Swiftpage including on its web site, a paper copy of which is available on request;

"Commencement Date" the commencement date specified in the Product Terms and if there is more than one, the earliest of them;

"Customers" customers (including Licensees and accredited Partners but not non-accredited third party resellers or distributors) to which you have supplied the Products;

"Exclusive Territories"

any countries, areas or markets in respect of which we have appointed or may from time to time appoint an exclusive Partner, as specified in the Product Terms or notified to you from time to time;

"Licensee" a person to whom you supply the Products for their own use and not onward distribution;

"Necessary Accreditation" the level of accreditation required in relation to each of the Products, pricing for and details of which are set out in the Product Terms and any updated, revised and/or continuing accreditation standards required by us and notified to you from time to time;

"Order" an order for Products made in accordance with clause 4 (and "Ordered" shall be construed accordingly);

"Partner" a value added reseller partner which has been appointed by us by entering into a written agreement with us and been accredited by us to distribute the Products;

"Partner Copy" any copy of the Product(s) provided to you by us in connection with this Agreement;

"Price List" our list of prices to be paid by all Partners in relation to each of the Products and other information about our charges (including any discounts, incentives and benefits), as described in the Product Terms, as updated and varied by us from time to time in accordance with clause 6.3;

"Product Terms" the terms relating specifically to a particular product or service of Swiftpage, the relevant copies of which will be provided to you by Swiftpage;

"Products" Swiftpage Products and Third Party Products;

"Revenue Target" such revenue target(s) specified in the Product Terms to be achieved from your distribution of the Products;

"Swiftpage Intellectual Property Rights" the Swiftpage Marks and all vested contingent and future intellectual property rights in and to the Swiftpage Products including goodwill, reputation, rights in confidential information, copyright, trade marks and design rights whether registered or unregistered, logos, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, patents, know how, trade secrets, inventions, get-up, database rights and (as applicable) any applications or registrations for the protection of these rights and renewals and extensions of them, existing in any part of the world, whether now known or created in the future;

"Swiftpage Mark" any name, trade mark, trade name, insignia, logo, symbol or slogan (whether registered or not) owned or used by us or any of our Affiliates now or in the future anywhere in the world;

"Swiftpage Products" licensed copies of the software products described in the Product Terms, the intellectual property rights in which are vested in Swiftpage (including if relevant, any improvements, modifications or corrections to them), associated technical and user manuals and documentation (whether in printed or electronic format) and (if applicable) any associated services provided by us;

"Software Licence Agreement" the agreement between us and the Licensee in the form specified by us from time to time (or if none is specified, in the form which accompanies the Swiftpage Products), by which we grant the Licensee a licence to use the relevant Product(s) on the terms in that agreement;

"Support and Maintenance" support and maintenance (whether to you or the Licensees) as described in the Product Terms;

"Term" the period for which you are appointed as a Partner in relation to each of the Products as detailed in the Product Terms;

“Territory” the territory for which you are appointed to distribute each of the Products as detailed in the Product Terms;

“Third Party Products” licensed copies of software products, the intellectual property rights in which are vested in a person other than either of us, as described in the Product Terms (including any improvements, modifications or corrections to them) and associated technical and user manuals and documentation, whether in printed or electronic format, as well as any associated services provided by a person other than either of us;

“Working Day” a week day other than a public holiday in England.

1.2 In this Agreement, the words:

“you” means the business entity identified in our relevant application form or other relevant documentation (and use of the words **“your”** and **“yours”** shall be interpreted accordingly), and

“we” means **Swiftpage International Limited** (company registered number 8397789) whose trading address is Ground Floor Q15, Quorum Business Park, Benton Lane Newcastle upon Tyne NE12 8EZ United Kingdom, and registered office is at c/o Bryan Cave LLP, 88 Wood Street, London, EC2V 7AJ (and use of the words **“us”** and **“our”** alone shall be interpreted accordingly), and use of any of the terms **“either, each or both of us”** and **“either, each or both of our”** (and similar expressions) shall be interpreted as the context requires.

1.3 In this Agreement:

1.3.1 headings are inserted for ease of reference only and shall not affect the meaning of the terms of this Agreement;

1.3.2 any phrase introduced by the terms **“include”**, **“including”**, **“for example”** or any similar expression will be construed as illustrative, not exhaustive and shall not limit the sense of the words prior to such term;

1.3.3 use of the singular shall be treated as including the plural and vice versa;

1.3.4 references to persons shall include bodies or persons whether corporate or incorporate;

1.3.5 references to a statute or statutory provision include, unless the context requires otherwise, a reference to that statute or statutory provision as from time to time amended, modified, extended, re-enacted, consolidated and all statutory instruments, orders, by-laws, directions and notices made pursuant to it made before or after the date of this Agreement;

1.3.6 words meaning the whole shall be treated as including a reference to any part of the whole.

1.4 The Product Terms shall have full force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement includes the Product Terms.

1.5 If there is a conflict between any of the terms of this Agreement, any term set out in the Product Terms and any other documents expressly incorporated by reference in this Agreement, the terms in the Product Terms shall prevail, followed by the terms of this Agreement, followed by any other document incorporated by reference.

2. Duration of Agreement; your appointment, rights and obligations

2.1 Each of us shall accept this Agreement in accordance with the Product Terms. This Agreement shall commence on the Commencement Date and continue until it is terminated in accordance with clause 19.

2.2 Subject to clause 19.2.2, we appoint you as a non-exclusive Partner to distribute the Products to Customers in the Territory. This appointment shall commence on the Commencement Date and continue for the Term, unless this Agreement is terminated earlier in accordance with clause 19.

During the Term you shall:

2.2.1 achieve the Necessary Accreditation within the time set out in the Product Terms, or if no time is specified, one year from the Commencement Date; and

2.2.2 at all times maintain the Necessary Accreditation in accordance with the Product Terms.

2.3 You shall act as a Partner on and subject to the terms of this Agreement, including any term set out in the Product Terms which is specific to a particular Product.

2.4 You shall perform your obligations in this Agreement, including any specified in the Product Terms, promptly, diligently and in accordance with the standard to be reasonably expected of an experienced, trained and appropriately qualified information technology service provider operating in your market. You agree to achieve your Revenue Target. If you fail to meet any Revenue Target, Swiftpage may take the steps relevant to the circumstances set out in the Product Terms.

2.5 You are permitted to distribute the Products to Customers, which shall include Licensees and other accredited Partners.

2.6 You shall ensure that every Licensee is made aware before they install or use any Product of the need for them to accept (electronically or by hand written signature) and comply with the terms of our Software Licence Agreement, a copy of which you shall provide to every Licensee before they install

or use any such Product. If required by us to do so (including by a term in the Product Terms), you shall provide us with a paper and/or electronic copy of the Software Licence Agreement, duly completed and signed in handwriting by an authorised signatory of the Licensee.

You will inform us immediately in writing if you become aware that a Licensee has breached their Software Licence Agreement. We will provide you with copies of our relevant Software Licence Agreements on request.

2.7 Nothing in this Agreement shall prevent you from distributing the Products to Customers outside the Territory except that you may not actively seek Customers for the Products in Exclusive Territories. We reserve the right to notify you of a territory, geographical area or market which we have reserved as an Exclusive Territory to ourselves or another person, at any time during this Agreement.

2.8 If you fail to achieve the Necessary Accreditation, you will have no right to make a claim for compensation against us in respect of this Agreement including any refund of any payment made for any Product or any initial sign-up, membership, accreditation, course, courseware or examination fees.

2.9 You shall comply with all rules, regulations and laws affecting your business relating to the Products including those relating to e-commerce, data protection, direct marketing and anti-competitive practices.

3. How you may use Partner Copies and our related services

3.1 We grant you a non-transferable and non-exclusive right to use each Partner Copy for the relevant Term in the Territory, for your own purposes described in the Product Terms only, and otherwise in accordance with the Software Licence Agreement accompanying such Partner Copy.

3.2 In respect of each Partner Copy (including any part of it) you shall not:

3.2.1 transfer it, grant or claim to grant any right in it, create any liability in it, or distribute or otherwise deal with or exploit it;

3.2.2 copy, alter, merge, translate, modify, develop, de-compile, disassemble, reverse engineer or

3.2.3 permit any other person to install, access or use it (whether directly or indirectly) in any way, including by permitting it to be sublicensed, rented, leased, or loaned or used as a hosted, bureau or software as a service or similar internet enabled service, in each case, except as expressly permitted by this Agreement or any other written agreement signed by one of our authorised director;

3.2.4 use or copy (irrespective of the extent of copying) the whole or any part of its graphic user interface, operating logic or underlying database structure and database fields for incorporation into or the development of any software or other product, service or technology.

3.3 If any of the Products include the provision of support and/or maintenance for all end users (including you), or if we provide you with such service under a separate agreement, you agree to use it only for your own operational business purposes relating to your own data, and not to use it for or on behalf of any of your Customers. You acknowledge that we keep records of the numbers of support calls made by all our customers, so are able to ascertain whether a certain customer is making an unexpectedly high number of calls, which would occur if that customer was using our support for or on behalf of its own Customers. You agree that so long as we act reasonably, based on such records we may decide in our absolute discretion whether or not you are using any support for your own purposes, or for or on behalf of your Customers.

3.4 If upon termination of this Agreement you do not return all Partner Copies to us in accordance with clause 20.1.3, we reserve the right to invoice you for the full recommended resale price (as at that date plus value added tax) of the Partner Copies, which you agree to pay in accordance with clause 6.

4. How does Product ordering work?

4.1 Subject to availability and in response to any Orders placed by you and accepted by us, we shall supply you with Products for onward distribution. Any Products supplied by us to you shall be subject to the terms of this Agreement.

4.2 Orders for the Products must be made in accordance with the ordering procedure described in the Product Terms.

4.3 No contract or obligation for the supply of the Products shall arise between us unless and until an Order has been accepted by us as described in the Product Terms.

4.4 We reserve the right to refuse to accept Orders, including in the following circumstances:

4.4.1 if we have insufficient stock available to meet your Order;

4.4.2 if the Product ordered has been withdrawn pursuant to clause 5;

4.4.3 if the Order is not based on our then current Price List applicable to you;

4.4.4 if we have a reasonable belief that the Product will be used by you other than in accordance with this Agreement or used by you or a Customer other than in accordance with the relevant Software Licence Agreement or to the detriment of our business;

4.4.5 if we have withdrawn our credit facility and you have not paid for your Order with cleared funds;

4.4.6 if you have not made any payment due to us (whether under this Agreement or otherwise) when due and such payment remains outstanding;

4.4.7 if you have not achieved the Necessary Accreditation for the Product which you have Ordered. We will use reasonable endeavours to inform you if we do not accept an Order as soon as possible after receipt of your Order and will refund to you any sums already paid by you in respect of that Order.

4.5 Once we have accepted your Order, you may not cancel it.

4.6 We will use our reasonable endeavours to ensure that Ordered Products are delivered in accordance with the delivery time agreed by us, but we shall not be under any liability for any failure to do so.

4.7 Any alleged shortages in delivery must be notified by you to us within ten Working Days of receipt of the Products. Any non-compliance with a warranty in a Software Licence Agreement or other return made by a Customer which is permitted by a Software Licence Agreement, must be notified in writing by you to us as soon as reasonably possible. You acknowledge that not all our Software Licence Agreements permit the return of the relevant Product and also acknowledge that we are only obliged to accept the return of Products in accordance with any relevant term in our Software Licence Agreement. If any Licensee wishes to return any Product to us in accordance with such a term, before doing so, you will notify us of their wish in writing as soon as reasonably possible, and follow our instructions.

4.8 You agree to ensure that the Products are stored and transported in a manner that will keep them in a good condition and to comply with any reasonable request made by us concerning the conditions in which they are to be stored or transported.

4.9 We shall fulfil all Orders on the terms of this Agreement to the exclusion of all other terms and conditions, including any communicated by you at any time prior to, with or after an Order. Unless we have expressly agreed in writing to the contrary prior to receiving an Order, if there is any inconsistency between an Order and the terms of this Agreement, the latter shall have precedence. You shall clearly and in good faith identify to us any inconsistencies of which you are, or ought to be, aware between an Order and the terms of this Agreement.

5. What happens if we withdraw a Product?

5.1 We may withdraw any Products on reasonable notice at any time. If we do withdraw any Product, we will give you as much notice as is possible in the circumstances and the following provisions shall apply to any withdrawn Product:

5.1.1 all unaccepted Orders from you for that Product shall be automatically cancelled. If a withdrawal is due to a Product not being or being alleged not to be in accordance with a warranty in a Software Licence Agreement or infringing or being alleged to infringe third party rights, or otherwise considered by us not suitable for use by a Licensee for any reason, we reserve the right to cancel all unfulfilled Orders;

5.1.2 if withdrawal is due to a Product not being, or being alleged not to be, in accordance with a warranty in a Software Licence Agreement or infringing or being alleged to infringe third party rights, or otherwise not being suitable for use by a Licensee for any reason and we require you to do so, you shall use your best endeavours to recover any such Products from Customers, and we shall pay your reasonable costs for doing so;

5.1.3 you shall cease distributing withdrawn Products either immediately or at such other time as is specified by us and shall cease acting in a manner which may suggest that you are a distributor of such Products. Subject to reimbursement by us of any payments received from you in respect of any stock of the relevant Products, you shall make the relevant Products available for collection by us, or, if requested by us to do so, destroy any remaining stocks of such Products still in your possession after any relevant period of notice for ceasing supply has expired; and

5.1.4 all of your rights under this Agreement in respect of such Products shall immediately cease.

5.2 Swiftpage in its sole discretion shall determine whether it has withdrawn a Product for the purpose of clause 5.1.

6. What are the payment, price and other terms of business between us?

6.1 The fees, prices and charges to be paid by you from time to time for the supply of Products and otherwise in connection with this Agreement are set out in our Price List, as may be amended in accordance with clause 6.3.

6.2 You shall pay our fees, prices and charges within thirty days of the date of our invoice, and by the payment methods described in our invoice.

6.3 We may amend our Price List and payment terms (including individual credit terms) from time to time in our absolute discretion. If we do so, this will not affect the price of any Products for which we have accepted an Order in accordance with clause 4.

6.4 All amounts payable under this Agreement shall be:

6.4.1 paid in pounds sterling; or paid in Euros or US dollars if the price list we have provided you is in Euros or US dollars; and

6.4.2 exclusive of value added tax ("VAT") or similar sales tax, which if applicable and subject to receipt of a valid VAT invoice you shall pay, as well as all other duties, charges and taxes (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.

6.5 While you understand that we have other rights and remedies, you agree that if any payment due to us is paid after the due date, we may charge you interest on a daily basis at the then current rate payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from time to time, from the due date until the date of actual payment, and interest shall accrue before as well as after judgment and any part payment. You agree to reimburse us for any costs (including our own and any third party costs as invoiced by any relevant third party service provider) we incur in recovering outstanding sums due to us from you.

6.6 The Products shall be at your risk from the date of delivery to you or to an address notified by you to us and, except to the extent required by law, we shall have no obligation to replace damaged or lost Products once risk in them has passed to you.

6.7 Notwithstanding any other provision in this Agreement, you shall distribute the Products on your own account at such prices as you may consider reasonable.

6.8 If acting reasonably, we believe that you are not complying with your obligations under this Agreement, you shall permit us or our nominated representative access to your premises during business hours only and on reasonable prior notice, for the purposes of ensuring that you are complying with your obligations under this Agreement.

6.9 All payments you make to us under this Agreement will be made in full without any set-off, restriction or condition and without any deduction or withholding, for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless you are required by law to make any such deduction or withholding.

6.10 If you fail to make any payment in accordance with this clause, or fail to perform any other obligation in this Agreement, by giving you written notice having immediate effect, we may suspend our performance of our obligations in this Agreement, until you make such payment or perform such obligation.

6.11 If there is a dispute about charges and/or payment between us which cannot be resolved within 14 days of the dispute arising, it shall be referred to our relevant head of sales and one of your senior managers with authority to resolve that dispute and both of us agree to act reasonably and in good faith to settle that dispute. Those individuals shall discuss the dispute (by telephone or face to face meeting) within 30 days of the dispute arising. If the dispute is not resolved within 40 days of the dispute arising it shall be referred to our managing director and your managing director (or equivalent), who shall discuss the dispute (by telephone or face to face meeting) within 45 days of the dispute arising.

7. What Product support and maintenance must each of us provide?

Subject to payment of any applicable charge(s), both of us agree to the provision of Support and Maintenance for each Product as set out in the Product Terms.

8. How will business information be shared?

8.1 Subject to clause 15, you shall supply to us such information as we may from time to time reasonably request, which information is or may be relevant to your performance of your obligations and rights in this Agreement, including about your financial and trading position.

8.2 You agree to keep and provide to us accurate records of new Customers and prospective customers, as described in the Product Terms.

8.3 We may provide you with certain information about us and Customers. You agree only to acquire and use our information (whether provided by us or another person) for a purpose approved by us.

8.4 You acknowledge that we may contact Customers (being our customers as well as yours) for our own business purposes and that such contact will not result in us being in breach of clause 15 or any other clause of this Agreement.

8.5 For the purpose of this clause 8.5, the terms "**Personal Data**", "**Processing**", "**Data Processor**" and "**Data Controller**" shall have the meanings given to them in the Data Protection Act 1998 (in this clause, the "**DPA**"). If either of us provides Personal Data to the other, both of us agree that:

8.5.1 both of our Processing of Customers' and prospective customers' Personal Data (including any disclosure) will comply with the DPA at all times; and

8.5.2 if one of us is a Data Controller and asks the other to process Personal Data on its behalf as Data Processor, the Data Processor shall act only on the Data Controller's instructions, comply with the DPA (including the seventh data protection principle regarding security) and (if required by the Data Controller to do so) enter into an additional agreement to confirm this.

8.6 You agree to notify us in writing as soon as you are aware of:

8.6.1 any claim alleging negligence or breach of contract or similar complaint relating to the Products that comes to your attention;

8.6.2 all claimed or suspected defects in the Products; and

8.6.3 any material change in your management or control.

9. How should the Products be promoted and contracts concluded?

9.1 You agree to promote the Products and the provision of related services to Customers in the Territory. We are willing to assist you in your marketing campaigns by supplying a reasonable amount of marketing materials, including such Product literature, promotional pamphlets, manuals and other similar material, in such media as we deem to be appropriate. We reserve the right to make a charge for such materials and will supply them subject to availability. You shall bear the cost of your marketing campaigns and the cost of any additional materials you wish us to provide. You shall not modify, alter, or amend such materials, unless you have received our written approval, and then only in the manner and to the extent permitted.

9.2 At our sole discretion we may select certain Partners to which we will pass any particular enquiry from a prospective customer, arising out of our marketing campaigns undertaken from time to time. Any such selections will generally be based upon consideration of location, individual Partner expertise, expressed customer preference and/or your sales performance and other reasonable criteria relating to your performance of the obligations in this Agreement. For the avoidance of doubt, the previous sentences refer to prospective customers who have made a direct enquiry to us and not existing Customers. If we receive an enquiry from an existing Customer which you have informed us should be linked to you and we have agreed to record that link, unless requested otherwise by that Customer, we will use our reasonable endeavours to pass that enquiry to you.

9.3 You shall:

9.3.1 in relation to any promotional materials produced by you in whatever format relating to the Products, display your name and logo together with the relevant Swiftpage Mark, as prescribed in the Brand Guidelines. If requested by us, all such materials shall be submitted for our approval (not to be unreasonably withheld or delayed) prior to being used;

9.3.2 only use promotional materials and conduct promotional campaigns which comply with all applicable rules, regulations and laws in force from time to time in the jurisdictions in which those materials or campaigns are used or conducted, including the Data Protection Act 1998, the Privacy and Electronic Communications Regulations 2003 and any codes or guidance issued by the Information Commissioner, Advertising Standards Authority, Committee for Advertising Practice and Independent Committee for the Supervision of Standards for Telephone Information Services, or any successor of them;

9.3.3 not participate in any illegal, deceptive, misleading or unethical practices or any other practices which may be detrimental to: the Products, us, our business and reputation or any third party owner of the Products;

9.3.4 not make any promises or representations or give any warranties, guarantees or indemnities on our behalf or on behalf of any third party owner in respect of the Products except those which are contained in the Software Licence Agreement or as otherwise authorised by us in writing, signed by our managing director;

9.3.5 conduct your business relating to the Products in a manner that will reflect favourably on them and on our good name and reputation or any third party owner of the Products;

9.3.6 make it clear to Customers that (other than in relation to the Software Licence Agreement, or any other contract made directly with us) they are entering into a contract with you as an independent contractor and not any member of the Swiftpage group of companies and that you are not authorised to act on Swiftpage's behalf; and

9.3.7 if you enter into any contract with a Customer which relates to the Products but is ancillary to the Software Licence Agreement, notify that Customer of our relationship as set out in clause 21.5.

10. How you may use Swiftpage's Marks

10.1 Other than as permitted under this Agreement, you shall not use or permit any third party to use any Swiftpage Mark, or any mark, words, logo, device or any other branding which is similar to or mimics any Swiftpage Mark, without our prior written consent.

10.2 After both of us have accepted this Agreement and you have achieved the Necessary Accreditation, you may use the relevant Swiftpage Mark as follows:

10.2.1 in compliance with our Brand Guidelines;

10.2.2 you agree to make any changes to any promotional materials incorporating references to the Products required by us, if those promotional materials do not comply with our Brand Guidelines or are inaccurate, within 14 days of our notifying you of them; and

10.2.3 you may not grant nor claim to grant any right to anyone else to use any Swiftpage Mark.

10.3 We may amend the Brand Guidelines from time to time, though we will use our reasonable endeavours to ensure we do so as little as possible and only when necessary. When we make any changes to our Brand Guidelines, we will notify you in our Partner newsletters, by email or in writing, giving you a reasonable amount of time to make any necessary changes to your use of any Swiftpage Mark. You shall amend your use of the relevant Swiftpage Mark within that time.

10.4 You agree not to use any Swiftpage Mark as part of your corporate or business name and always to display your corporate or business name and the relevant Swiftpage Mark in accordance with our Brand Guidelines. On any documentation and media (including electronic media) and on every page of a web site used or controlled by you relating to the Products, you shall make it clear that you are a separate entity from Swiftpage. For example, on such documentation and media you shall include your business and trading name and trading address, and if you are a corporate entity you shall include your registered name, registered office address and registration number; on a web site you may provide such information via a link to a separate web page of that web site.

10.5 You agree not to use, create or register any trade mark which incorporates any Swiftpage Mark or any similar mark, logo, words, device or any other branding, other than with our prior consent in writing. You shall at any time on our request and at your own cost transfer to us any rights you may have in any trade mark (whether registered or unregistered) which incorporates any Swiftpage Mark or similar wording.

10.6 You may use the relevant Swiftpage Mark in accordance with our Brand Guidelines in the content of the pages of any web site used by you to promote the Products, when you shall make it clear on all pages (including via a link to a single page) that you are:

10.6.1 an independent contractor authorised and accredited to distribute our Products and provide associated value added services;

10.6.2 not in any other way connected with or a part of our or our Affiliates' business;

10.6.3 not authorised to act on our behalf.

10.7 You may not register or use as a domain name any Swiftpage Mark, or any mark, words, logo, device or any other branding which is similar to or mimics any Swiftpage Mark. Except as described in clause 10.6 or if we have given you our prior written consent, you may not register or use any Swiftpage Mark or any mark, words, logo, device or any other branding which is similar to or mimics any Swiftpage Mark:

10.7.1 in connection with any web site owned, controlled or operated by you, including as a meta-tag;

10.7.2 on any web site or similar service or technology (including any electronic marketing campaign and any auction web site) operated, owned or controlled by another person; or

10.7.3 in connection with your own promotional, distribution or other related activities (including if they are carried out on your behalf or under your control by another person), including as a key word or 'Google Adword', or as an on-line identity.

10.8 If you do use or register or have registered any Swiftpage Mark or similar branding as set out in clause 10.7, you shall at any time on our request and at your own cost:

10.8.1 stop doing so and if applicable remove that Swiftpage Mark or similar branding from the relevant registration or use;

10.8.2 transfer any registration incorporating any Swiftpage Mark or similar branding to us.

10.9 In relation to any web site relating to the Products owned, controlled or operated by you or on your behalf, you agree:

10.9.1 not to copy text or graphics from any web site of ours, other than technical specification wording; and

10.9.2 that prior to creating a hyperlink to our website from your existing or future websites, you shall obtain our written consent and in so doing shall provide us with details of the design of the hyperlink, the position of the hyperlink and any other details required by us at the time of your request. Where consent is given, you acknowledge that we may withdraw it for any reason, the content of your web page on which such hyperlink appears shall make it clear that the hyperlink is to our web site and our web page shall appear in a separate, new window and shall not be framed. You also agree that we may check your use of any hyperlink from time to time and that we may require you to change or stop using any hyperlink to our website as we in our absolute discretion may require.

11. What are each of our rights and obligations relating to the Swiftpage Intellectual Property Rights?

11.1 You acknowledge that we or our licensors are the owners of the Swiftpage Intellectual Property Rights and agree that except to the extent set out in this Agreement, you acquire no interest in any of the Swiftpage Intellectual Property Rights.

11.2 You shall not do anything nor allow anything to be done which may damage or affect the validity of the Swiftpage Intellectual Property Rights, including breaching any applicable Software Licence Agreement, or any Third Party Product, nor hold yourself out as the owner of the Swiftpage Intellectual Property Rights.

11.3 You shall inform us if you become aware of any actual or potential infringement or invalidity of any of the Swiftpage Intellectual Property Rights or of any Third Party Product distributed by you. You shall at our request and expense sign, execute and do all such deeds, documents, acts and things (including allowing your name to be used in any proceedings) as we may reasonably require with a view to restraining such infringement and/or obtaining damages and/or otherwise protecting our or our licensors' rights.

11.4 You acknowledge that we are the owners of the goodwill in relation to the Swiftpage Products and agree that if any goodwill in a Product is created or developed by your distribution of it in accordance with this Agreement, the goodwill in that Product shall benefit us, or the relevant third party if the goodwill is created in a Third Party Product. Nothing in this clause shall prevent you from benefiting from the goodwill you create or develop in your own business.

12. What happens if a Swiftpage Product infringes someone else's rights?

12.1 We indemnify you against any and all liability, loss, damage, reasonable costs and expenses (including reasonable legal fees) which you may incur as a result of any claim or action brought against you by a third party alleging that your authorised or proper distribution and/or your use of any Swiftpage Product in accordance with this Agreement or their lawful use of any Swiftpage Product infringes the intellectual property rights of such third party. If that happens, you must comply with clause 12.4 and take reasonable steps to minimise any losses which you experience or incur.

12.2 If any Product becomes (or in our reasonable opinion is likely to become) the subject of a claim of infringement of a third party's intellectual property rights, we may elect to either:

12.2.1 obtain the right for you to continue distributing and/or using that Product in the manner permitted under this Agreement; or

12.2.2 modify or replace the infringing part of that Product so as to avoid the infringement or alleged infringement, without materially reducing its functionality or performance.

12.3 If having used all reasonable endeavours we cannot achieve either of the circumstances referred to in clauses 12.2.1 or 12.2.2 on reasonable terms, immediately on written notice (including on our web site or by e-mail) from us:

12.3.1 you shall not distribute the Product in question to any Customers;

12.3.2 if you give us written notice to do so, we will refund you the price you paid to us for any Product which you have not yet distributed to a Customer; and

12.3.3 your right to distribute and use the Product in question shall automatically terminate.

12.4 You shall:

12.4.1 promptly notify us of any claim or threatened claim concerning your use of the Product; and

12.4.2 not independently defend or respond to such claim or threatened claim; and

12.4.3 cooperate with us in the defence of any such claim or threatened claim, subject to our payment of your reasonable costs incurred in providing such cooperation.

12.5 The indemnity in clause 12.1 shall not apply to any claim:

12.5.1 which arises from any development, modification, implementation, configuration or integration of a Swiftpage Product other than by us or approved by us in writing (including in the relevant technical and user manuals); or

12.5.2 which arises as a result of the distribution or use of the Swiftpage Product other than as permitted by this Agreement or the relevant Software Licence Agreement or as described in the relevant technical and user manuals; or

12.5.3 which arises from your use or distribution of any version of a Swiftpage Product which is not the most recent version, so long as we have offered the most recent version to you and your use or distribution (as applicable) would have avoided that claim;

12.5.4 which arises from your use or distribution of a Swiftpage Product after you have been notified that it infringes a third party's intellectual property rights;

12.5.5 if, in relation to that claim, you do not comply with clause 12.4.

12.6 The provisions of this clause 12 state your exclusive remedy in connection with any claim or threatened claim in relation to the infringement of any Swiftpage Product.

12.7 You shall immediately notify us of any claim by a Licensee that their use of a Product infringes the intellectual property rights of a third party and cooperate with us in dealing with any such claim or threatened claim, subject to our payment of your reasonable costs incurred in providing such cooperation.

12.8 For the avoidance of doubt, whatever the circumstances, nothing in this Agreement shall oblige us to make any correction or provide any alternative or additional Swiftpage Product.

13. Are you permitted to develop the Products?

Except to the extent permitted by law, you may not nor may you permit any Customer or other third party to merge, translate, develop (other than by using the products features generally available for end users), de-compile, disassemble, reverse engineer or otherwise create derivative works from the Products. You may be able to extend your rights to develop the products if you enter into a separate developer agreement.

14. Import and export control laws

If the Territory includes countries outside the European Economic Area, you agree to comply with any applicable export and import laws.

15. Recruiting the other party's staff

If either of us wish to recruit a member of the other's staff, the recruiting party shall notify the other of such wish and consult with it.

16. Is any information confidential?

16.1 Both of us acknowledge that all and any information (written or oral) relating to or received as a result of this Agreement (including the terms of this Agreement) and disclosed by one of us to the other is confidential and is to be used solely for the operation and purposes of this Agreement, except information which is:

16.1.1 to be disclosed by court order or otherwise as required by law;

16.1.2 already in or subsequently comes into our possession other than as a result of a breach of this clause 16 or any other obligation of confidentiality to us by the disclosing party; or

16.1.3 already in the public domain other than as a result of a breach of this clause 16 or any other obligation of confidentiality to us by the disclosing party.

16.2 You recognise that certain information concerning the Products is confidential, including information which is obviously confidential or is identified by us to be confidential, and as such you agree to:

16.2.1 only disclose such information to your employees that is necessary for them to know; and

16.2.2 ensure that those employees to whom you disclose the information know that it is our confidential information and you shall procure that they comply with the provisions of this clause 16.

17. How are each of us liable under this Agreement?

17.1 Neither of us exclude or limit our liability for:

17.1.1 fraud (including fraudulent misrepresentation);

17.1.2 death or personal injury arising from our negligence;

17.1.3 any other matter which may not be excluded by law.

17.2 Subject to clause 17.1, neither of us shall be liable to the other for:

17.2.1 loss of profits, revenues or contracts, lost savings, business interruption, lost funding, loss of goodwill or reputation, wasted expenditure or loss or corruption of data, in each case whether arising directly or indirectly and whether it is known, foreseen or foreseeable;

17.2.2 indirect, incidental, special, punitive or consequential loss or damage, whether it is known, foreseen or foreseeable.

17.3 Subject to clauses 17.1 and 17.2 we shall not be liable to you for any loss, damage, costs or expense incurred by you:

17.3.1 after the date we make generally available a correction for a defect or alleged defect in any Product (if, in our discretion, we decide to provide such a correction);

17.3.2 after the date on which you terminate this Agreement;

17.3.3 to the extent that we give you a reasonable opportunity to minimise your losses, damage, liabilities or expenses by (at our discretion) providing alternative or additional Products;

17.3.4 arising from your failure to fulfil your responsibilities or obligations to any other party;

17.3.5 arising from any matter under your control or the control of a third party;

17.3.6 arising from any claim made against you based on any representation made by you, unless we have explicitly authorised you in writing to make that specific representation; and

17.3.7 arising from any claim made against you by a Customer or a third party, unless and to the extent to which that claim relates to a Product.

17.4 Subject to clauses 17.1, 17.2 and 17.3, in any Year each of our liability to the other under or in connection with this Agreement arising from tortious act or omission including negligence, breach of contract or statutory duty, or any other liability, shall not exceed the total amount paid by you in accordance with this Agreement in that Year for the Products (or waived by us in relation to Partner Copies) which directly relates to that liability. In this clause “Year” means a year from the Commencement Date or any anniversary of it, or any shorter period if this Agreement terminates for any reason before the end of such year.

17.5 Subject to clause 17.1, nothing in this clause 17 shall apply to either our indemnity given to you in clause 12 or your indemnity given to us in clause 18, or to your obligation to make any payment in accordance with this Agreement.

17.6 Both your and our employees and Affiliates may rely upon and enforce the restrictions of liability in this clause 17 in that person’s own name and for that person’s own benefit, provided that both of us reserve the right to terminate this Agreement or vary any term of it by written agreement between ourselves, without the consent of such people.

17.7 You accept that it is your responsibility to determine whether the Products meet your specific requirements and/or those of Customers. Without limitation, subject to clause 17.1, and in relation to any Product used by you in accordance with the terms of the relevant Software Licence Agreement only (but otherwise irrespective of any other provision of this Agreement), we do not warrant:

17.7.1 that the Products will operate in any selected combination;

17.7.2 that operation of the Products will be uninterrupted or error free or that all Product errors can or will be corrected;

17.7.3 that operation of the Products will meet your requirements or those of Customers.

17.8 Each of the limitations and exclusions set out in this clause 17 is to be construed as a separate limitation or exclusion, applying and surviving even if for any reason one or other of the limitations or exclusions is held to be inapplicable or unreasonable in any circumstances, so that if either of us become liable for loss or damage which would otherwise have been excluded, such liability shall be subject to the other limitations and provisions set out in this Agreement.

17.9 This clause 17 shall remain in force even if this Agreement is terminated.

18. What is your responsibility to us if another person makes a claim against us relating to your obligations?

18.1 You will indemnify us for all third party claims which arise out of:

18.1.1 your promoting, distributing and/or otherwise exploiting the Products;

18.1.2 your supporting or providing any other service for the Products; or

18.1.3 any breach by you of this Agreement.

19. How can this Agreement be terminated?

19.1 This Agreement shall terminate automatically without notice if:

19.1.1 you are unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986) or you become insolvent or an order is made or a resolution passed for your liquidation, administration, winding up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets you enter into or proposes any composition or arrangement with your creditors generally or papers are filed at court seeking a moratorium in respect of you under Schedule A1 of the Insolvency Act 2000; or

19.1.2 you are a partnership or sole trader, you cease to exist or a petition is presented, or an order is made, for the bankruptcy of any of you or any of your partners or if you or any of them enters into a deed of arrangement or compounds with his creditors or has a receiving order made against him; or

19.1.3 anything similar to the circumstances described in clauses 19.1.1 and 19.1.2 occurs in any applicable jurisdiction.

19.2 We may terminate this Agreement immediately on written notice if:

19.2.1 you fail to pay any amount you owe us in accordance with clause 6; or

19.2.2 you fail to achieve or maintain the Necessary Accreditation; or

19.2.3 you breach any of clauses 2.5, 2.6, 3.2, 3.3, 5.1.3, 6.8, 8.2, 8.3, 9.1, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 10, 11.2 and 15, and such breach (if rectifiable) is not rectified within 30 days of our notifying you of that breach;

or

19.2.4 you commit a material or persistent breach of your obligations under this Agreement and such breach (if rectifiable) is not rectified within 30 days of our first notifying you of that breach.

19.3 If any additional circumstances permitting either of us to terminate this Agreement are described in the Product Terms, either of us may terminate this Agreement in the manner described in the Product Terms.

19.4 If we have permitted you to distribute Third Party Products, we may terminate your right to distribute them by giving you thirty days' written notice.

19.5 If we have permitted you to distribute more than one Product:

19.5.1 and the circumstances described in clauses 19.2 or 19.3 occur, we may terminate this Agreement in relation to all or any of those Products, in our sole discretion; and

19.5.2 if we have terminated your right to distribute all Products, this Agreement shall automatically terminate.

19.6 Any termination of this Agreement shall not affect any accrued rights or liabilities of either of us, nor shall it affect the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.

20. What happens if this Agreement is terminated?

20.1 Upon termination of this Agreement for any reason:

20.1.1 all Orders for Products which we have not dispatched shall be automatically cancelled, and if you have paid for that Order we will refund you for it, unless you have any indebtedness to us, in which case we will set off the amount of that refund against your indebtedness;

20.1.2 all your indebtedness to us shall immediately become due and payable;

20.1.3 you shall discontinue the use of, uninstall and return to us within 14 days of the date of termination all Products (other than those for which you have separately paid a licence fee for your own use) and Partner Copies and in each case any copies of them, in whatever medium;

20.1.4 you shall immediately discontinue the use of all Swiftpage Marks and return to us (or at our option destroy) within 14 days of termination all artwork, signs, stationery, advertising, promotional literature, manuals and other documents and materials supplied by us to you and/or containing or embodying any Swiftpage Intellectual Property Rights and/or that would make it appear to the public that you have any connection with us or the Products.

20.1.5 you shall immediately return to us any of our confidential information recorded in a physical medium and irretrievably destroy any of our confidential information recorded in an electronic medium, and if requested by us immediately certify in writing signed by one of your directors (or equivalent officer) that you have done so;

20.1.6 you shall immediately remove any hyperlinks to our website from your website;

20.1.7 you shall co-operate with us in ensuring that your Customers are provided with alternative Partners' details and shall notify us as soon as possible of your intention to transfer the business of your Customers to any alternative person (irrespective of whether they are a Partner). You acknowledge that during any period of notice of termination we may: (a) inform Customers that you will shortly not be or no longer are (as applicable) a Partner and (b) provide them with details of alternative Partners;

20.1.8 you shall immediately give up all rights granted by us; and

20.1.9 any provisions of this Agreement which remain to be performed either in whole or in part or which are capable of having effect after termination, remain in full force and effect despite termination.

21. What miscellaneous terms apply to this Agreement?

21.1 This Agreement and our interest and benefits under it may be assigned in whole or in part by us. This Agreement is personal to you and may not be assigned, subcontracted, licensed (including sub-licensed), charged or otherwise dealt with or disposed of (whether in whole or in part) by you without our prior written consent. This means that if you sell the assets of your business, you cannot automatically transfer this Agreement to the buyer.

21.2 This Agreement may only be varied or amended in writing, signed by an authorised officer of each of us, provided that we may change the Product Terms, any documentation referred to in this Agreement and any other relevant documentation, at any time by giving you written notice.

21.3 This Agreement constitutes the entire agreement between us regarding its subject matter and other than those agreements included or referred to in this Agreement, supersedes all previous agreements, arrangements, representations and understandings between us relating to that subject matter, whether arising from practice, written, oral, express or implied. You acknowledge that you do not enter into this Agreement in reliance upon any representation, warranty, statement, undertaking or assurance not fully reflected in the terms of this Agreement and that no agreement, statement or warranty not contained in this Agreement shall be valid or binding, provided that nothing in this clause shall exclude any liability for fraudulent misrepresentations.

21.4 The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions which shall remain in full force and effect.

21.5 Both of us agree that we are independent contractors and neither of us will represent ourselves as agent, servant, franchisee, joint venturer or partner of, or endorsed by, the other. You do not have

and shall not hold yourself out as having any authority to accept any order on our behalf. You agree not to pledge our credit, receive any money or give any receipt on behalf of us or compromise any debt due to us, or incur any other liability or obligation, or make any promise or representation on behalf of us or claim to do any such thing.

21.6 Your day to day communication with us shall be via the contact details given in our relevant documentation and ours to you shall be via those details given in your application form to join our Partner programme (or any new details which you subsequently notify to us), and shall use the appropriate medium including e-mail, and in the case of us communicating with you, by publishing notices on our web site. Any notice required to be given in writing by a term of this Agreement may be given and shall be deemed to be given as set out on the following page:

Method of sending	When the notice will be deemed to be given	Details to which the notice should be sent
Delivered in person	the time of delivery, if delivered between 9 a.m. - 5 p.m., otherwise 9 a.m. on the next Working Day	to us, to the Head of Legal, Swiftpage International, PO Box 338, Newcastle Upon Tyne, NE6 9BH; to you, to the address you gave on your application form to join our Partner programme (or any new address notified to us)
Sent by first class post within the UK	three Working Days after posting to the address of the party to be notified, given at the beginning of this Agreement	as above
Sent from within the UK or overseas by courier with an international reputation with guaranteed next day (or sooner) delivery	the next Working Day	as above
Faxed	Not deemed given	Not accepted
E-mailed	the earlier of: the intended recipient confirming receipt (specifically or by conduct); or one Working Day after the e-mail was sent if a confirmation copy is sent by post or courier	to us, to International.Legal@swiftpage.com, also email cc to your usual Swiftpage contact's email address; to you, to your usual e-mail address or any other e-mail address you give us for sending notices.

21.7 Neither of us shall be liable to the other for any failure to perform or for any delay in performance under this Agreement (other than an obligation to pay monies) to the extent such non-performance or delay is caused by any circumstances beyond our reasonable control including: fire, war, civil commotion, any act of central or local government, any industrial disputes, lockouts and strikes of any third party. You acknowledge that this clause shall apply if we are unable for any reason to fulfil Orders due to changes in national or international trading conditions or laws.

21.8 A waiver (whether express or implied) by either of us of any of the provisions of this Agreement shall not constitute a continuing waiver and that waiver shall not prevent either of us from enforcing any of the provisions of this Agreement.

21.9 Except as expressly set out elsewhere in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than in accordance with that Act.

21.10 This Agreement shall be governed by and construed in accordance with English law and both parties submit to the exclusive jurisdiction of the English courts.

21.11 Nothing shall prevent us from applying to any court in any part of the Territory or elsewhere for an injunction or other like remedy to restrain you from committing any breach or anticipated breach of this Agreement and for damages and other consequential relief.

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