

# SCHEMESERVE (ADM NETWORK LTD) TERMS OF SERVICE

Last modified: 26<sup>th</sup> June 2019

These conditions (**Conditions**) shall be incorporated into each contract (**Contract**) between ADM Network Ltd (**ADM**) and the customer (**Customer**) for which purpose any reference to Contract is deemed to include the Customer's service order form (**Service Order Form**), these Conditions and any additional policies, guidelines and notices (**Policies**) incorporated into the Contract by ADM and any reference to Customer shall mean the person, business or company named on the Service Order Form. ADM reserves the right to revise the Conditions, the Payment Terms and/or the Policies from time to time the most current versions of which can be found at <https://www.schemeserve.com/docs/TermsOfService.pdf>. The Conditions are effective between the Customer and ADM as of the date of the Customer accepting these Conditions. The Customer may be expected to accept the latest copy of these Conditions before renewing the Contract.

## 1. ADM SERVICES, OBLIGATIONS & RESPONSIBILITIES

- 1.1 ADM offers the Customer use of ADM's products, software, website, and services (**Services**) for the **Term** (as defined below) subject to the terms of the Contract and the Customer not being barred from receiving the Services under the laws of the United Kingdom or other jurisdiction. The Customer shall, if requested by ADM, provide current and accurate identification, contact, and other information as part of the registration process and/or continued use of the Services.
- 1.2 The Customer is solely responsible for maintaining confidentiality of user account passwords and for maintaining passwords that cannot be easily guessed or cracked and is responsible for all activities that occur under the Customer's account. The Customer shall immediately notify ADM of any unauthorized use of account passwords or account or any other breach of security. ADM will not be liable to the Customer or any other party for any loss or damage arising from the Customer's failure to provide accurate information or to keep passwords secure.
- 1.3 **ADM Responsibilities.** ADM shall: (i) provide our basic support for the Services to the Customer at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which ADM shall give at least 8 hours' notice via email or via the Services and which ADM shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Greenwich Mean Time), or (b) any unavailability caused by circumstances beyond the reasonable control of ADM, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving ADM employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Services only in accordance with applicable laws and government regulations.
- 1.4 **ADM Protection of Customer Data.** ADM shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer data. We shall not (a) modify Customer data, (b) disclose Customer data except as compelled by law in accordance with clause 5.1 or as expressly permitted in writing by the Customer, or (c) access Customer data except to provide the Services and prevent or address service or technical problems, or at Customer request in connection with customer support matters.
  - 1.4.1 The latest ADM Data Protection and GDPR Addendum forms part of and should be read in conjunction with these Conditions. It can be found at <https://www.schemeserve.com/docs/DataProtectionAddendum.pdf>
- 1.5 **ADM Warranties.** ADM warrant that the Services shall perform materially in accordance with the application online ADM help guide except in the case of integration with non-ADM or third-party services and that the functionality of the Services will not be materially decreased during the Term.

## 2. DURATION AND FREE TRIAL

- 2.1 The Contract shall commence on the date specified in the Service Order Form (**Service Commencement Date**) and shall continue until terminated in accordance with clause 12 (**Termination**). When specified by ADM in the Service Order Form or when specified by relevant ADM website materials that form part of an online trial signup process the first Calendar Month of the Term shall be a free trial period (**Free Trial Period**). The Customer's right to terminate the Contract during the Free Trial Period is set out in clause 12 (**Termination**). The payment exclusion in respect of the Free Trial Period is set out in clause 3.
- 2.2 For the purposes of these Conditions a calendar month shall commence on and be inclusive of a given day in a given month and shall expire at the end of the period of days equal to the number of days in the month following the month in which that calendar month commenced (**Calendar Month**) and each subsequent Calendar Month shall run consecutively from the Calendar Month immediately preceding it. For the purpose of the Contract the first Calendar month shall commence on the Service Commencement Date.

## 3. FEES AND PAYMENT

- 3.1 The monthly payments shall be set out in the Service Order Form and shall be payable by the Customer in advance on a Calendar Monthly basis with each such payment to be made no later than the day immediately preceding the Calendar Month to which the monthly payment in question relates provided that no monthly payment shall accrue or be payable in respect of the Free Trial Period. For the avoidance of doubt where there is a Free Trial Period the first monthly payment relates to the second Calendar Month of the Term and must be paid no later than the last day of the Free Trial Period. When there is no Free Trial Period the first monthly payment is due on the Service Commencement Date.
- 3.2 Any commission payments agreed between the parties shall be payable in accordance with the rates set out in the service Order Form and shall be payable by the Customer in arrears on a Calendar Monthly basis. Commission payments shall be invoiced by ADM at any time following the Calendar Month to which the Commission Payment in question relates and shall be payable by the Customer within 30 days of the date of the invoice provided that no monthly payment shall accrue or be payable in respect of the Free Trial Period.
- 3.3 Subject to any alternative arrangement agreed in writing between the parties all monthly payments shall be paid by Direct Debit for which purpose the Customer shall complete the Direct Debit mandate supplied by ADM to the Customer in enough time and with enough detail and accuracy to enable monthly payments to be made in accordance with the Contract. ADM reserves the right to require the Customer to comply with this clause prior to the Service Commencement Date.
- 3.4 For the avoidance of doubt where the Customer has validly exercised its right to terminate during the Free Trial Period the Customer will not be liable for any monthly fee or any commission payment nor will the Customer be in breach of the obligation set out in clause 3.3.

3.5 All monthly payments and commission payments are exclusive of VAT. Where any payment due from Customer to ADM is late, interest will be charged to the Customer at an annual rate of 5% above the Bank of England Base rate applicable from time to time which shall accrue daily from the date of such default to the date the payment in question is received by ADM in cleared funds during which time ADM reserves the right to suspend the Services until payment is brought up to date. ADM reserves the right to vary the monthly payments from time to time. Monthly payments within a Contracted minimum Term may only be adjusted as stated in that Contract.

### 3.6 APPROPRIATE CONDUCT

3.7 The Customer accepts that all information, data, text (including but not limited to HTML, CSS and JavaScript), software, music, sound, photographs, graphics, video, messages or other materials (**Content**) are the sole responsibility of the person from which such Content originated. ADM reserves the right, but shall have no obligation, to pre-screen, flag, filter, refuse, modify or move any Content made available via the Services. The Customer accepts that it may be exposed to Content that is offensive, indecent or objectionable, and that the Customer uses the Services at its own risk.

3.8 The Customer shall be liable for its own conduct and any Content that it creates, transmits or displays while using the Services and for any consequences thereof. The Customer agrees to use the Services only for purposes that are legal, proper and in accordance with the Contract. The Customer agrees to not engage in any activity that interferes with or disrupts the Services or servers, or networks connected to the Services. To report any activity or Content that may violate the terms of the Contract, please contact us via <https://www.schemeserve.com> or via normal support channels.

3.9 The Customer undertakes to observe and comply with any Policies which form part of the Contract from time to time. Customers outside of the United Kingdom agree to comply with their own local rules regarding online conduct and acceptable content, including laws regulating the export of data to and from the United Kingdom or Customer's country of residence.

## 4. ADM PRIVACY POLICY

4.1 ADM's privacy policy (**Privacy Policy**) shall be deemed to have been incorporated into all Contracts. For information about ADM's Privacy Policy please refer to <https://www.schemeserve.com/privacy-policy>. By using the Services, the Customer acknowledges and agrees that ADM may access, preserve, and disclose its information relating to its user accounts and any Content associated with those accounts if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) satisfy any applicable law, regulation, legal process or enforceable governmental request, (b) enforce the Contract, including investigation of potential violations hereof, (c) detect, prevent, or otherwise address fraud, security or technical issues (including, without limitation, the filtering of spam), or (d) protect against imminent harm to the rights, property or safety of ADM, its users or the public as required or permitted by law.

4.2 The Customer accepts that the technical processing and transmission of the Services, including the Customer's Content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks, devices or services. The Customer also understands and agrees that the person or people in its organization who manage the Services may have access to its account and its content and may suspend or terminate the Customer's account access and Customer's ability to modify the Customer's account.

## 5. PROPRIETARY RIGHTS

### *ADM's Rights*

5.1 The Customer acknowledges and agrees that the Services and any necessary software used in connection with the Services (**Software**) contain proprietary and confidential information that is protected by applicable intellectual property and other laws and treaties. The Customer further acknowledges and agrees that Content contained in sponsor advertisements or presented to the Customer through the Services is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by ADM or other proper third-party rights holders, the Customer agrees not to modify, rent, lease, loan, sell, distribute or create derivative works based on Content, the Services or Software, in whole or in part except as specifically authorized in a separate written agreement.

5.2 Subject to the other provisions of the Contract, ADM grants the Customer a non-transferable and non-exclusive right and license to use the object code of its Software; provided that the Customer does not (and does not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software, unless such activity is expressly permitted or required by law or has been expressly authorized by ADM in writing. The Customer agrees not to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Services. The Customer agrees not to access the Services by any means other than through the interface that is provided by ADM for use in accessing the Services except as specifically authorized in a separate written agreement.

5.3 Except as expressly authorized by ADM the Customer agrees not to use, copy, imitate, or incorporate any trademark, service mark, trade dress, company name, or product name in a way that is likely to cause confusion among consumers. The Customer also agrees not to remove, obscure, or alter ADM's or any third party's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Services or Software.

### *Customer Rights*

5.4 ADM claims no ownership or control over any Content submitted, posted or displayed by the Customer, or the Customers Clients on or through the Services. The Customer or a third-party licensor, as appropriate, retain all patent, trademark and copyright to any Content the Customer submits, posts or displays on or through the Services and the Customer is responsible for protecting those rights, as appropriate. By submitting, posting or displaying Content on or through the Services which are intended to be available to the members of the public, the Customer grants ADM a worldwide, non-exclusive, royalty-free license to reproduce, adapt, modify, publish and distribute such Content for the purpose of displaying, distributing, providing and promoting the Services. ADM reserves the right to syndicate Content submitted, posted or displayed by the Customer on or through the Services and use that Content in connection with the Services or any service offered by ADM. ADM furthermore reserves the right to refuse to accept, post, display or transmit any Content in its sole discretion and will advise Customer prior to taking such action.

5.5 The Customer represents and warrants that it has all the rights, power and authority necessary to grant the rights granted herein to any Content submitted.

## 6. SOFTWARE AND AUTOMATIC UPDATES

6.1 The Customer use of any Software provided by ADM will be governed by the Conditions and any additional terms and conditions of any end user license agreement accompanying such Software. ADM Software may automatically report version number or other diagnostic information and may automatically download upgrades to the Software to update, enhance and further develop ADM Services, including providing bug fixes, patches, enhanced functions, missing plug-ins and new versions.

## **7. POLICIES REGARDING COPYRIGHT AND TRADEMARKS**

- 7.1 It is ADM's policy to respond to notices of alleged infringement that comply with the European Union Copyright Directive or other applicable law and to terminating the accounts of repeat infringers.
- 7.2 For information regarding ADM's trademark complaint procedure, please contact ADM via our website <https://www.schemeserve.com>. Any use of ADM's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features must be in compliance with the Conditions and in compliance with ADM's then current Brand Feature use guidelines, and any content contained or reference therein, which are expressly incorporated into the Contract, copies of which can be requested via ADM's website <https://www.schemeserve.com> or by writing to ADM at the mailing address found on the aforementioned website.

## **8. GENERAL PRACTICES REGARDING USE AND STORAGE**

- 8.1 The Customer agrees that ADM has no responsibility or liability for failure to store any Content and other communications maintained or transmitted via the Services. The Customer acknowledges that ADM may have set no fixed upper limit on the number of transmissions the Customer may send or receive through the Services or the amount of storage space used; however, ADM retains the right, at its sole discretion, to create limits at any time with or without notice.
- 8.2 Notwithstanding clause 12.5, upon the termination of the Customer's use of the Services ADM will close its account and the Customer will no longer be able to retrieve content contained in that account.

## **9. REASONABLE USE**

- 9.1 The Customer agrees to use the Services solely for reasonable business use or personal use and the Customer agrees not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Services, use of the Services, or access to the Services except as otherwise expressly provided for under the Contract or as specifically authorized in a separate written agreement.

## **10. MODIFICATIONS TO SERVICE**

- 10.1 ADM reserves the right at any time to permanently discontinue the Services (or any part thereof) giving 90 days' notice except during the agreed minimum term (Minimum Term) specified in the Service Order Form in which case the Customer agrees that ADM shall not be liable to the Customer or to any third party for any modification, suspension or discontinuance of the Services (or any part thereof).

## **11. TERMINATION**

- 11.1 The Customer may terminate the Contract (a) by giving no less than 3 days written notice to expire no later than the last day of the Free Trial Period or (b) by giving no less than 90 days written notice in writing to expire on or after the last day of the minimum term specified in the Service Order Form.
- 11.2 In the event of continued use of the Services by the Customer at any time following the seventh day after the last day of the minimum term specified in the Service Order Form these Conditions will remain in force and the last renewal proposal sent to the Customer by ADM will be deemed to have been accepted.
- 11.3 ADM may terminate the Contract for any reason by giving not less than 30 days written notice to expire on or after the last day of the Minimum Term.
- 11.4 ADM may terminate the Contract with immediate effect by notice in writing if the Customer is in breach of any part of the Contract in which case the Customer shall remain liable for all monthly payments which would otherwise have been payable during the Minimum Term unless the right to terminate afforded by this clause is exercised by ADM prior to the latest date the Customer could have exercised its right to terminate during the Free Trial Period in which case the Customer shall have no liability for monthly fees or commissionPayments.
- 11.5 In the event of termination for any reason, the Customer account will be disabled, and the Services shall cease, and the Customer may not be granted access to the Services, the Customer's account or any files or other content contained in Customer's account. Sections 12 (Termination), 14 (Indemnity), 15 (Disclaimer), 16 (Limitation of Liability), 17 (Exclusions and Limitations) and 20 (including choice of law, severability and statute of limitations), of the Conditions, shall survive expiration or termination.
- 11.6 In the event of termination for any reason, if requested by the Customer ADM will provide an electronic CSV (Comma Separated Values) file or files of Customer's data pertaining to clients, insurance risks and claims experience within 28 days of such request being made.

## **12. LINKS**

- 12.1 ADM may provide, or third parties may provide, links to other World Wide Web sites or resources. ADM may have no control over such sites and resources and the Customer acknowledges and agrees that ADM is not responsible for the availability of such external sites or resources and does not endorse and is not responsible or liable for any Content, advertising, products, or other materials on or available from such sites or resources. The Customer further acknowledges and agrees that ADM shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services available on or through any such site or resource.

## **13. INDEMNITY**

- 13.1 The Customer agrees to hold harmless and indemnify ADM, and its subsidiaries, affiliates, officers, agents, employees, advertisers, licensors, suppliers or partners, (collectively "ADM and Partners") from and against any third party claim arising from or in any way related to the Customer's use of the Services, any breach of the Contract or any other actions connected with use of the Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, ADM will provide the Customer with written notice of such claim, suit or action.

## 14. DISCLAIMER

### 14.1 THE CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT NOTWITHSTANDING CLAUSES 1.3 AND 1.5:

- a) CUSTOMER USE OF THE SERVICES IS AT THE CUSTOMER'S SOLE RISK. THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ADM AND PARTNERS EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- b) ADM AND PARTNERS DO NOT WARRANT THAT (i) THE SERVICES WILL MEET CUSTOMER REQUIREMENTS, (ii) ADM SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF ADM SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY THE CUSTOMER THROUGH ADM SERVICES WILL MEET CUSTOMER EXPECTATIONS, AND (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- c) ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF ADM SERVICES IS DONE AT THE CUSTOMER'S OWN DISCRETION AND RISK AND THAT THE CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO THE CUSTOMER'S COMPUTER SYSTEMS OR OTHER DEVICES OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- d) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY THE CUSTOMER FROM ADM OR THROUGH OR FROM ADM SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

## 15. LIMITATION OF LIABILITY

- 15.1 THE CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT ADM AND PARTNERS SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ADM OR PARTNERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RESULTING FROM: (i) THE USE OR THE INABILITY TO USE ADM SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM ADM SERVICES; (iii) UNAUTHORISED ACCESS TO OR ALTERATION OF CUSTOMER'S TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY OR ADM SERVICES; OR (v) ANY OTHER MATTER RELATING TO ADM SERVICES.

## 16. EXCLUSIONS AND LIMITATIONS

- 16.1 NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN SECTIONS 14 AND 15 WHICH ARE LAWFUL IN THE CUSTOMER'S JURISDICTION WILL APPLY TO CUSTOMER AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

## 17. NO THIRD-PARTY BENEFICIARIES

- 17.1 The Customer agrees that, except as otherwise expressly provided in the Conditions, there shall be no third-party beneficiaries to the Conditions except where the Customer has made a prior written request to ADM which has been agreed in writing by an authorised representative of ADM.

## 18. NOTICE

- 18.1 The Customer agrees that ADM may provide the Customer with any notices, including but not limited to those regarding changes to the Conditions, by email, regular mail, or postings via the Services.

## 19. GENERAL INFORMATION

### *Entire Agreement*

- 19.1 The Contract constitutes the entire agreement between the Customer and ADM and govern the Customer's use of the Services, superseding any prior agreements between the Customer and ADM for the use of the Services. The Customer also may be subject to additional terms and conditions that may apply when the Customer uses or purchases certain other Services (not provided for in the Contract), affiliate services, third-party content or third-party software.

### *Choice of Law and Forum*

- 19.2 The Contract and the relationship between the Customer and ADM shall be governed by the laws of the United Kingdom – England and Wales without regard to its conflict of law provisions. The Customer and ADM agree to submit to the personal and exclusive jurisdiction of the courts located within the United Kingdom – England and Wales.

### *Waiver and Severability of Conditions*

- 19.3 The failure of ADM to exercise or enforce any right or provision of the Contract shall not constitute a waiver of such right or provision. If any provision of the Contract is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Conditions remain in full force and effect.

### *Statute of Limitations*

- 19.4 The Customer agrees that regardless of any statute or law to the contrary, any claim made by the Customer or cause of action arising out of or related to use of the Services or the Contract must be filed within one (1) year after such claim or cause of action arose or be forever barred.

- 19.5 The section headings in the Conditions are for convenience only and have no legal or contractual effect.