

# storm® Terms and Conditions

## 1. Placing Orders

- 1.1 These terms and conditions apply to the supply of services and/or deliverables as detailed in any executed Order Form and/or Service Specification (the "Services"). All "Orders" placed with Content Guru ("CG") by you (the "Client"), together the "parties", shall constitute an offer to CG and no obligations shall come into being until any Order is accepted by CG in accordance with these terms and conditions.
- 1.2 To the extent any terms contained in (1) the Order Form, (2) the Service Specification, (3) the Service Level Agreement ("SLA"), (4) these terms and conditions, (5) the End-User Licence Agreement ("EULA") or (6) the Data Processing Agreement ("DPA"), together forming the "Agreement", are inconsistent, they shall prevail in that order. No variations or amendments to these the Agreement) shall be binding except with the written agreement of the parties.
- 1.3 The procedure for ordering, delivery and acceptance of Services shall be as follows unless agreed otherwise in writing between the parties:
- i. Upon CG's request, the Client shall provide a Statement of Requirements (SOR) providing details of the Services it wishes to procure (CG to provide a template SOR for the Client to complete, if required);
  - ii. CG shall provide a Price Quote (PQ) with a unique reference identifier for the Services, which shall be based on the Client's SOR but may differ for commercial or technical reasons. Any documentation including but not limited to user manuals, bid information or supplementary documentation referenced in the PQ shall form part of the PQ. The PQ (or any Change Notice (CN) referencing a pre-existing PQ) shall form the basis for the Client ordering the Services and not the SOR;
  - iii. The Client will sign the PQ or CN to place an Order, and this shall constitute a Purchase Order (PO). CG may accept or reject the PO in its sole discretion; CG will notify the Client via email as to whether the PO has been accepted or rejected;
  - iv. CG's Order Management department will issue an Order Acceptance to accept the PO. If the PO is accepted, the Order shall come into effect ("Effective Date") and the Initial Term for the Services shall commence ("Activation Date").
  - v. CG will then use reasonable endeavours to provision the Services and make the licences for access to and use of the Services available to the Client within five (5) working days;
  - vi. CG (liaising with the Client) shall produce a Service Specification(s), which shall contain the entirety of the Services to be delivered by CG (superseding the SOR and/or PO). No other documentation shall define the Services to be delivered;
  - vii. The Client shall agree and sign the Service Specification(s) in the timeframe agreed within the Service Specification(s) or within ten (10)

Working Days (meaning Monday to Friday between the hours of 08:00-18:00 excluding applicable local public holidays) should a timeframe not be detailed in the Service Specification(s), following which the Client will be deemed to have accepted the Service Specification(s);

- viii. CG shall deliver the Services in accordance with the Service Specification(s), such delivery not to be unreasonably withheld or delayed (but shall be excused for any delays which, in whole or part, are not caused by or attributable to CG);
- ix. Any changes to the Services shall be mutually agreed in writing between the Client and CG;
- x. Upon delivery of the Services, the Client shall perform User Acceptance Testing (UAT) in accordance with the process and timeframe agreed in the Service Specification(s), or within ten (10) Working Days should a timeframe not be detailed in the Service Specification(s);
- xi. The Client shall sign-off the UAT in the timeframe agreed within the Service Specification(s) or within ten (10) Working Days should a timeframe not be detailed in the Service Specification(s), following which, providing no material non-conformities with the Service Specification have been notified to CG during this period, the Client shall be deemed to have fully accepted delivery of the Services and the Services shall be considered 'live' by CG.

## 2. Charges and Payment

- 2.1 Unless agreed otherwise in writing by CG and the Client, the Services shall be invoiced as follows:
  - i. Setup Charges - one-off (or phased one-off) charges relating to the configuration and launch of Services (including without limitation professional service charges) from Activation Date;
  - ii. Licence Charges – recurring subscription charges for access to the storm platform and usage of the Services - monthly in advance, from Activation Date (subject to any discount period as may be agreed in the Order);
  - iii. Support Charges – recurring charges for service management and reporting - monthly in advance, from Activation Date (subject to any discount period as may be agreed in the Order); and
  - iv. Transaction Charges – recurring charges for usage of the Services, including but not limited to call minute volumes, message fees, data dips and data storage - monthly in arrears, as incurred.
- 2.2 The price for the Services shall be (a) as specified in the Order Form, or where no price has been quoted, the undiscounted price for the relevant service(s) listed in CG's standard "Price List" (as amended from time to time, available on request) as at the date the Order is accepted by CG; (b) exclusive of value added tax unless otherwise stated in the Order Form; and (c) payable in the stated currency, without deduction or set-off and in full and cleared funds within thirty (30) days of the date of the invoice ("Due Date"). Time shall be of the essence for the purposes of this clause.
- 2.3 CG reserves the right to apply maximum credit limits that CG will extend to Client's account ("Credit Limits") to the value of Services provided to the Client.

Any Credit Limits shall be communicated to the Client following CG conducting a Dun & Bradstreet Credit Report ("D&B Report") which shall be used as the basis for determining any Credit Limits. Order acknowledgement and acceptance will only occur after receipt of the D&B Report. Should the Client exceed any Credit Limits applied, CG reserves the right to suspend all Services until such time as payable amounts have been received, and the balance owing to CG no longer exceeds the Credit Limits. In addition, CG may, at its discretion, enforce transaction-based Credit Limits through the immediate suspension of further transaction services should the value of invoiced and un-invoiced transaction charges exceed agreed Credit Limits.

- 2.4 If payment is not made by the Due Date(s), default interest shall be charged on a daily basis and payable on demand on any overdue payment both before and after judgment, from the date such payment fell due to the date of actual payment at the rate of 4.0% per annum above the base rate of Barclays Bank from time to time, compounded monthly. The Client shall pay such interest together with the overdue amount and all reasonable legal costs incurred by CG for the recovery of overdue payments.
- 2.5 If Client, acting in good faith, disputes all or any part of an invoice then it will notify CG of that dispute within seven (7) days of the invoice date, specifying the disputed amount(s) and its reasons for disputing them. Any sums in the invoice that are not notified to CG as being in dispute will be paid by Client in accordance with this Agreement. Client will co-operate with CG to resolve any dispute in a timely manner. If the parties agree that all or part of the disputed amount is properly due, then Client will pay that amount in full within seven (7) calendar days of that agreement or the Due Date, whichever is the later.
- 2.6 Client will be required to make payment for all Licence Charges and Transaction Charges by direct debit. Payment for Licence Charges and Transaction Charges will be debited from the nominated Client's bank account to reach CG's bank account on the last Working Day of the month the invoice is dated.
- 2.7 In the event that a Client's use of the Service incurs Transaction Charges for inbound or outbound calls, SMS, or other traffic for which rates have not been specifically agreed between the parties, then CG's standard Price List will apply to such transactions until rates have been agreed between CG and the Client.
- 2.8 In setting up a Service for a Client, CG will, by default, block inbound calls to 0800 numbers as well as outbound calls or SMS transactions to mobile, non-geographic, premium rate or international destinations, unless specifically provided otherwise in the Service Specification agreed between the parties.
- 2.9 All transaction costs incurred by Client's use of the Services and charged to CG by a network operator, service provider or other third party shall be the responsibility of Client and payable by Client to CG, irrespective of whether the transaction costs are generated by Client or by any Client customer. This will include any transactions that arise from fraudulent use of a Client's services.
- 2.10 Notwithstanding anything to the contrary in this Agreement or any Order, CG may increase the Charges for the Services annually by five percent (5%) with effect from each anniversary of the Activation Date, except where a change in CG's direct utilities supply costs exceed five percent (5%) in which case CG may increase the Charges for the Services by such actual increased cost on a pass-through basis.

- 2.11 The Charges for the Renewal Term(s) of any Order shall be adjusted to the undiscounted price for the relevant Service(s) listed in CG's then-current standard Price List.
- 2.12 CG reserves the right to set-off any or all amounts due and receivable by it from amounts payable by CG to Client.

### **3. Client's Obligations**

- 3.1 The Client shall ensure that its use of the Services is at all times in accordance with these terms and conditions and the EULA, adheres to all applicable laws and is advertised, promoted, operated and presented in a manner so as not to bring or be likely to bring (based on CG's sole and reasonable opinion) the CG name, brand and Services into disrepute.
- 3.2 The Client will cooperate with CG in all matters relating to the Services, and comply with the CG's instructions. The Client will (at no cost to CG) allow CG access to its premises (and use all reasonable efforts to procure access for CG to any third party's premises), systems, personnel and information as required by CG to enable CG to perform its obligations under this Agreement.
- 3.3 The Client shall at all times comply with obligations and regulations imposed by applicable law as they may affect the Services and shall also, upon the request of CG at any time, provide such information and take such steps as may be necessary in order to enable CG to comply with all regulations, directions, conditions and obligations from time to time imposed on CG or otherwise by law in relation to the Services. CG shall have the right at any time to monitor the Services to ensure compliance with the provisions of this Agreement.
- 3.4 The Client shall take such steps as are reasonably necessary to ensure access to the Services and in particular to ensure that sufficient lines, ports and other apparatus are ordered to meet all reasonably expected demand therefor. CG shall have the right in its discretion to suspend, bar or restrict access to the Services if at any time the number of calls or attempted calls to the Client causes or is liable to cause congestion or other disruption within any part of the CG systems. IP Centrex and SIP trunks systems architecture has been designed with a contention ratio of 10:1 and CG makes no warranty for performance levels greater than these stated limits for the core architecture of the system.
- 3.5 CG, acting reasonably, reserves the right to take any necessary corrective actions in the event the Client's Services experience unusual or unexpectedly high contact volumes (for example, a DDoS (distributed denial-of-service) attack on the Client's Services) that may disrupt the Client's Services or the services CG provides to other customers. CG will notify the Client promptly and use reasonable endeavours to agree an action plan to manage and address the abnormal contact volumes. In the event the parties are unable to agree an action plan, CG (acting reasonably) reserves the right at its discretion to suspend, bar, restrict or terminate the affected Service(s).
- 3.6 Where Client is, at their request, allocated a special telephone number applicable to the Services, Client shall be responsible for all necessary investigations and inquiries as to the legitimacy of use of such number and CG shall have no liability whatsoever with respect to the number chosen and its use by Client.
- 3.7 The ability to make calls to the Emergency Services numbers 999 or 112 may be adversely affected in cases where a Client uses CG Services to make

outbound calls over the internet. The Emergency Services may not receive accurate information on the location of the callers, or calls may fail due to power or internet connection failures. CG cannot accept any liability for the failure of such calls and Clients should therefore ensure that all users are aware of these limitations and have alternative means of accessing these services.

- 3.8 Client shall ensure that: all location information (including address information, Caller Line Identification (CLI) and associated site address) is up-to-date and accurate in all respects, and that all necessary equipment is configured to present a CLI that correctly corresponds to the relevant site so that CG is able to provide accurate location information to the Emergency Services. Client shall promptly update CG in the event such location information changes. Client accepts full responsibility for failure to comply with its obligations under this clause and agrees to indemnify CG in full for, and save CG harmless from and against, all costs, expenses, damages, liabilities and losses (whether direct or indirect) of any kind, including (without limitation) any interest, fines, legal and other professional fees and expenses awarded against or incurred by CG as a result of or whatsoever related to the Emergency Services being dispatched to a location other than the location from which the call to 999 or 112 originated as a result of the Client's failure to comply with its obligations under this clause.
- 3.9 In circumstances where Client (or its end customer) chooses to route calls to the Emergency Services via a network not operated by CG, Client shall be wholly responsible for ensuring that it has adequate procedures in place to ensure the Emergency Services receive such calls; CG accepts no liability for the failure of such calls.
- 3.10 Client acknowledges that it is responsible for the activities and communications of all employees, representatives or agents of Client who have access to and/or use of the storm platform ("Client personnel") in relation to the Services, including communications on the storm Platform, and the compliance by all Client Personnel with this Agreement and, in particular, the EULA.
- 3.11 The Client shall indemnify, keep indemnified and hold CG harmless against all liability, costs, losses, damages, expenses, interest, penalties, legal costs and other professional costs and expenses arising out of any breach by or other act, omission or default of the Client under or in relation to this Agreement. In order to be able to fulfil the terms of the indemnities within this Agreement, the Client shall effect and maintain legal liability insurance with a reputable insurer to the value of at least £5,000,000.

#### **4. CG's Obligations**

- 4.1 CG will perform the Services using reasonable care, skill and diligence in accordance with best industry practice. CG will hold and maintain all necessary licences and consents, and will comply with all relevant legislation in relation to the Services.
- 4.2 CG will deliver the Services as detailed in the Order Form and will ensure that, upon delivery, the Services conform in all material respects with the Service Specification. CG will then maintain the Services in normal operating conditions in accordance with this Agreement and the SLA.
- 4.3 CG reserves the right to (a) charge prevailing daily or half-daily professional services charges if support is required outside the support times specified in the SLA and (b) charge an additional amount for support where the problem has

arisen because Client has changed parameters and Services or software configurations without prior written notification to and the consent of CG.

- 4.4 Upon valid request for support from the Client, CG, or its agent or subcontractor undertakes to use reasonable endeavours to resolve the support request. For the avoidance of doubt, no other support is provided for under this Agreement unless otherwise agreed in writing by the parties.
- 4.5 In the event that hardware is purchased by the Client under any Order, the Client will benefit from a 12-month warranty from date of despatch of the hardware to the Client. Any subsequent hardware fault issues after expiry of the warranty period are the responsibility of the Client.

## **5. Order Duration, Cancellation, Suspension & Termination**

- 5.1 The "Initial Term" of any Order shall be agreed by the parties in the Order Form and shall commence from Activation Date. Unless agreed otherwise by the parties, any additional Services purchased under the Order by CN shall be coterminous with the Initial Term.
- 5.2 Upon expiry of the Initial Term, the Order shall automatically renew for subsequent periods of twelve (12) months (each a "Renewal Term"), unless the Client provides a minimum of thirty (30) days' Notice prior to the expiry date of the Initial Term or Renewal Term of the Order.
- 5.3 Where the Client wishes to cancel an Order accepted by CG, before the Order has been delivered, the Client shall be required to pay: (a) any Setup Charges in the Order Form; and (b) the Licence Charges for the first twelve (12) months of the Initial Term as stated in the Order Form.
- 5.4 In the event Client wishes to terminate an Order after the Services have been delivered, the price of the Services and the Licence Charges for the remaining duration of the Initial Term or Renewal Term shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 5.5 Either party may terminate any Order and this Agreement forthwith on written Notice to the other party at any time if: (a) the other party commits any material or persistent breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within thirty (30) calendar days of receipt of a request in writing from the other party so to do, to remedy the breach (such request to contain a warning of such party's intention to terminate); or (b) the other party shall have a receiver or administrative receiver appointed to it or over any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall enter into any voluntary arrangement with its creditors or shall become subject to an administration order.
- 5.6 Notwithstanding anything to the contrary express or implied elsewhere in the Agreement, CG (without prejudice to its other rights) may immediately terminate any Order and this Agreement or any of the Services provided hereunder upon written Notice in the event that: (a) the Client ceases, or threatens to cease, to carry on business; or (b) CG is directed by Ofcom or other competent authority (whether directly or indirectly) to cease to facilitate



or allow the provision of the Services. CG reserves the right to immediately suspend without notice any Services if it has reason to suspect fraud or deception (including fraudulent generation of traffic from any source to any Services) has occurred or is likely to occur in future in connection with the Services.

- 5.7 In addition CG may suspend the Services: (a) if the Client fails to pay the Charges for the Services when due; (b) in order to comply with any law, regulation, request, order, direction, determination or consent of a court or other competent administrative or regulatory authority; (c) in order to carry out any emergency maintenance or repair of the Services; (d) in order to carry out planned maintenance, repair, or improvement of the Services (in which circumstances CG will provide a minimum of five (5) Working Days prior notice of the suspension and, where practicable, will agree with the Client when the Services will be suspended and for how long); or (e) if CG has reasonable grounds to believe that the Client has breached or is likely to breach any of its obligations in relation to use of the Services hereunder.
- 5.8 Upon termination of this any Order and/or this Agreement, CG shall, if so requested by Client, provide all assistance reasonably required by Client to facilitate the smooth transition of the Services to Client or any replacement supplier appointed by it. The parties shall scope and agree any exit and transition services which shall be chargeable on a time and materials basis at CG's prevailing professional services rates.
- 5.9 No rights will accrue to a Client in respect of porting of a number used in a service provided by CG unless the Client has had continuous use of the number for the same service for a period of twelve (12) months. CG will be entitled to levy a charge for number porting in all cases.

## 6. Confidentiality

Each party hereto undertakes to the other that it shall keep, and shall procure that its directors, employees and agents shall keep secret and confidential and shall not use or disclose to any other person any information or material of a technical or commercial nature relating in any manner to the business, products or services of the other party which they may receive or obtain in connection with or incidental to performance of this Agreement without the consent of the other party, provided that such obligation does not apply to confidential information which: (a) was already in the lawful possession of the receiving party and at its free disposal before the disclosure by the disclosing party to the receiving party; (b) is lawfully disclosed to the receiving party without any obligations of confidence by a third party; (c) is or becomes generally available to the public through no act or default on the part of the receiving party or its directors, employees or agents; (d) is independently developed without access, knowledge or reference to the confidential information; or (e) is required to be disclosed by a governmental or regulatory body or court of law with compellable and competent jurisdiction. This clause shall survive termination of any Order or this Agreement.

## 7. Force Majeure

Neither party shall be held in breach of its obligations hereunder nor liable to the other for any loss or damage which may be suffered by the other party due to any cause, event(s) or circumstances beyond its reasonable control

including, without limitation, any act of God, failure, interruption or shortage of power supplies, flood, drought, lightning or fire, epidemic, pandemic, strike, lock-out, trade dispute or labour disturbance, act or omission of Government, other competent authority, highways authorities, failure of telecommunications or utilities operator, sanctions, embargo, war, terrorist attack, military operations or riot ("Force Majeure Event"). A party affected by any Force Majeure Event shall immediately give the other party written notification of its nature and extent and the parties shall cooperate to mitigate its effects or agree upon reasonable alternative arrangements. Where a Force Majeure Event continues for a period exceeding ninety (90) days, either party may terminate any affected Order or this Agreement immediately on written Notice to the other party without liability to the other party and without prejudice to any rights or obligations which have accrued prior to termination.

## **8. Intellectual Property**

- 8.1 Neither Party shall acquire any rights to the other Party's patents, trademarks, copyrights or other intellectual property under this Agreement, nor shall either party be entitled to use any intellectual property rights or marks of the other without an express written licence or consent to do so.
- 8.2 Client agrees that CG retains all right, title, and interest (including all intellectual property rights) in and to the Services and any and all related and underlying technology and documentation, derivative works, modifications, or improvements of any of the foregoing (the "CG Technology"). CG grants to the Client a fully paid-up, royalty free, non-exclusive, non-transferable, irrevocable license to use any CG Technology for the duration of any Order and in accordance with this Agreement.
- 8.3 CG shall indemnify the Client against any claim that the normal use of the Services is a direct infringement of the intellectual property rights of any third party in the United Kingdom provided that the Client: (a) provides prompt notice of the claim to CG; (b) does not prejudice CG's defence of such claim; and (c) gives CG all reasonable assistance and grants CG sole authority to control the defence and any related settlement of any such claim.
- 8.4 CG shall have the right to change all or any part of the Services in order to avoid any infringement.
- 8.5 The foregoing states the entire liability of CG to the Client in respect of infringement of intellectual property rights of any third party.
- 8.6 The Client hereby grants CG and its respective affiliates and assigns a non-exclusive, non-transferable, irrevocable licence to use the name, or any abbreviation thereof, or any logo or adaptation thereof, of the Client in any advertising or promotional materials, including CG's and its respective affiliates and assigns' websites, or for any other commercial purposes related to the promotion of CG's and its respective affiliates products and services.

## **9. Limitation of Liability**

- 9.1 Except in relation to death or personal injury caused by CG's negligence or any other liability which may not be limited at law, CG shall not be liable to the Client for loss of profits, loss of contracts or any indirect or consequential loss arising from negligence, breach of contract or howsoever caused.



- 9.2 CG's aggregate liability under all Orders and this Agreement shall be limited to the total amount of annual charges payable by Client to CG for the Services.
- 9.3 CG shall not be liable for any delay or failure in the supply or performance of the Services which is not caused by or attributable to CG. Where any part of the Services is obtained by the Client from a third party service provider, CG assumes no liability in relation to the provision of those services.

## 10. Dispute Resolution

If a dispute arises out of or in connection with this Agreement (Dispute), then the parties shall follow the procedure set out in this clause:

- i. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents;
- ii. on service of the Dispute Notice, representatives of the parties shall attempt in good faith to resolve the Dispute;
- iii. if the representatives of the parties are for any reason unable to resolve the Dispute within fifteen (15) days of service of the Dispute Notice, the Dispute shall be referred to senior representatives of the parties who shall attempt in good faith to resolve it;
- iv. if the senior representatives of the parties are for any reason unable to resolve the Dispute within fifteen (15) days of it being referred to them, the parties will attempt to settle the Dispute by mediation; and
- v. if the Dispute is not resolved within thirty (30) days of being referred for mediation, the Dispute shall be finally resolved by the Courts.

## 11. General

- 11.1 This Agreement contains the entire agreement between the parties in respect of the subject matter and supersedes, replaces and invalidates any prior written or oral agreements, representations or understandings between them relating to such subject matter. Nothing in this Agreement shall attempt to exclude representations made fraudulently which either party can be shown to have relied upon.
- 11.2 No variation of any Order or this Agreement shall be effective unless it is in writing and signed by authorised representatives of the parties. Notwithstanding the foregoing, CG shall have the right by written notice to the Client to modify this Agreement at any time so as to comply with any regulations, determinations or other requirements applicable to or imposed upon CG by any competent authority.
- 11.3 All "Notices" which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out in the Order, or such other address as the recipient may designate by written notice. Any such Notice given may be delivered personally or by first class prepaid post letter and shall be deemed to have been served: if by hand, when delivered; or if by first-class post, forty-eight (48) hours after posting.
- 11.4 This Agreement shall be binding on and endure for the benefit of the successors in title of the parties, and shall not be assigned or sub-contracted by any party without the prior written consent of the other. Notwithstanding the foregoing,

CG may assign the benefit or sub-contract its obligations under this Agreement to any company within its corporate group.

- 11.5 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 11.6 If any provision of this Agreement is held by any competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions of this Agreement and the remainder of the affected provision.
- 11.7 Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties.
- 11.8 A person who is not a party to this Agreement shall not have any rights under or in connection with it.
- 11.9 This Agreement shall be governed by and construed and interpreted in accordance with the laws of England and Wales. The parties hereby submit to the exclusive jurisdiction of the English courts.
- 11.10 The parties' duly authorised representatives may sign any Order Form by using electronic signature. The parties agree that the electronic signatures express the consent for this Agreement to be legally binding and to serve as evidence on the same account as a hand-signed paper document.