



## **TERMS AND CONDITIONS FOR SUPPLY OF SERVICES**

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF clause 8.**

### **1. INTERPRETATION**

#### **1.1. Definitions:**

**Advertising Regulations:** means any present or future applicable code of practice, adjudication, decision, guideline, direction or rule of any Advertising Regulator and includes any applicable modification, extension or replacement thereof in force from time to time;

**Advertising Regulator:** means the Office of Communications ("Ofcom"), the Broadcast Committee of Advertising Practice ("BCAP"), the Committee of Advertising Practice ("CAP"), the Advertising Standards Authority ("ASA"), the ASA (Broadcast) and any other UK or EU regulator or statutory or regulatory body relevant to the Advertising and/or the Services to be provided under this Agreement;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.5.

**Contract:** the contract between [company name] and the Customer for the supply of Services in accordance with these Conditions.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

**Customer:** the person or firm who purchases Services from myfamilygenealogy.co.uk; Robert Parker.

**Customer Default :** has the meaning set out in clause 4.2.

**Deliverables:** means the products and any associated material intended for use by the Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or



equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, research proposal or invoice.

**Services:** the services, including the Deliverables, supplied by myfamilygenealogy.co.uk; Robert Parker to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by myfamilygenealogy.co.uk; Robert Parker to the Customer.

## **1.2. Interpretation:**

- a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- c) A reference to **writing** or **written** includes email.

## **2. BASIS OF CONTRACT**

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when myfamilygenealogy.co.uk; Robert Parker issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3. Any samples, drawings, descriptive matter or advertising issued by myfamilygenealogy.co.uk; Robert Parker, and any descriptions or illustrations contained in myfamilygenealogy.co.uk; Robert Parker's brochures or website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any quotation given by myfamilygenealogy.co.uk; Robert Parker shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.



### **3. SUPPLY OF SERVICES**

- 3.1. myfamilygenealogy.co.uk; Robert Parker shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. myfamilygenealogy.co.uk; Robert Parker shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. myfamilygenealogy.co.uk; Robert Parker shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and myfamilygenealogy.co.uk; Robert Parker shall notify the Customer in any such event.
- 3.4. myfamilygenealogy.co.uk; Robert Parker warrants to the Customer that the Services will be provided using reasonable care and skill.

### **4. CUSTOMER'S OBLIGATIONS**

- 4.1. The Customer shall:
  - a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - b) co-operate with myfamilygenealogy.co.uk; Robert Parker in all matters relating to the Services;
  - c) provide myfamilygenealogy.co.uk; Robert Parker with such information and materials as myfamilygenealogy.co.uk; Robert Parker may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - e) comply with any additional obligations as set out in the Specification.
- 4.2. If myfamilygenealogy.co.uk; Robert Parker's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - a) myfamilygenealogy.co.uk; Robert Parker shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays myfamilygenealogy.co.uk; Robert Parker's performance of any of its obligations;



- b) myfamilygenealogy.co.uk; Robert Parker shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from myfamilygenealogy.co.uk; Robert Parker's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- c) the Customer shall reimburse myfamilygenealogy.co.uk; Robert Parker on written demand for any costs or losses sustained or incurred by myfamilygenealogy.co.uk; Robert Parker arising directly or indirectly from the Customer Default.

## **5. ADVERTISING STANDARDS**

- 5.1. Both parties shall comply with all applicable laws and Advertising Regulations issued, made or given by any Advertising Regulator.
- 5.2. The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable law or Advertising Regulation.
- 5.3. The Customer shall inform myfamilygenealogy.co.uk; Robert Parker without delay if the Customer considers that any draft Deliverables submitted to the Customer by myfamilygenealogy.co.uk; Robert Parker for approval is false or misleading or in any way contrary to law or to any applicable Advertising Regulation.

## **6. CHARGES AND PAYMENT**

- 6.1. Condition 6.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 6.3 and condition 6.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 6 shall apply in either case.
- 6.2. Where the Services are provided on a time-and-materials basis:
  - (a) the charges payable for the Services shall be calculated in accordance with myfamilygenealogy.co.uk; Robert Parker's standard hourly or daily fee rates as amended from time to time;
  - (b) myfamilygenealogy.co.uk; Robert Parker's standard hourly or daily fee rates (as published from time to time) are calculated on the basis of an seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
  - (c) myfamilygenealogy.co.uk; Robert Parker shall be entitled to charge it's standard hourly or daily fee rate (as published from time to time) for each hour worked outside the hours referred to in condition 5.2(b) on a pro-rata basis;



- (d) myfamilygenealogy.co.uk; Robert Parker shall invoice the Customer monthly in advance for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 6.3. Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to myfamilygenealogy.co.uk; Robert Parker in one amount or in instalments as set out in the Specification on its achieving the corresponding milestone. All amounts due under this agreement shall be paid by the Customer to myfamilygenealogy.co.uk; Robert Parker in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). On achieving milestone, myfamilygenealogy.co.uk; Robert Parker shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 6.4.
- 6.4. Any fixed price contained in the Specification excludes:
- (a) the cost of any licences, materials or services reasonably and properly provided by third parties required by myfamilygenealogy.co.uk; Robert Parker for the supply of the Services. Such materials and third party services shall be invoiced by myfamilygenealogy.co.uk; Robert Parker at cost; and
- (b) VAT where applicable, which myfamilygenealogy.co.uk; Robert Parker shall add to its invoices where applicable at the appropriate rate.
- 6.5. The Customer shall pay each invoice submitted to it by myfamilygenealogy.co.uk; Robert Parker in full, and in cleared funds, within 30 days of receipt.
- 6.6. Without prejudice to any other right or remedy that myfamilygenealogy.co.uk; Robert Parker may have, if the Customer fails to pay myfamilygenealogy.co.uk; Robert Parker on the due date myfamilygenealogy.co.uk; Robert Parker may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- (b) suspend all Services until payment has been made in full.
- 6.7. Time for payment shall be of the essence of the Contract.



- 6.8. All payments payable to myfamilygenealogy.co.uk; Robert Parker under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.9. myfamilygenealogy.co.uk; Robert Parker may, without prejudice to any other rights it may have, set off any liability of the Customer to myfamilygenealogy.co.uk; Robert Parker against any liability of myfamilygenealogy.co.uk; Robert Parker to the Customer.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by myfamilygenealogy.co.uk; Robert Parker.
- 7.2. The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on myfamilygenealogy.co.uk; Robert Parker obtaining a written licence from the relevant licensor on such terms as will entitle myfamilygenealogy.co.uk; Robert Parker to license such rights to the Customer. The Customer shall be responsible for any licence fees in relation to such third party Intellectual Property Rights.
- 7.3. All Deliverables prepared by myfamilygenealogy.co.uk; Robert Parker and paid for by the Customer will be the Customer's property but the Customer will not necessarily own the copyright(s) or other Rights in it. For the avoidance of doubt, the Customer shall not own the copyright in 'stock' photographs obtained from news or photographic agencies for particular advertisements or to photographic or film negatives or to any other medium in which this material may be supplied.

## **8. APPROVALS AND AUTHORITY**

- 8.1. Any reference in this Agreement to the Customer's "Written Approval" shall mean written approval by directors or employees of the Customer authorised to approve myfamilygenealogy.co.uk; Robert Parker's work ("Authorised Person").
- 8.2. The Customer will notify myfamilygenealogy.co.uk; Robert Parker in writing of any change to the Authorised Persons. myfamilygenealogy.co.uk; Robert Parker shall not be responsible for any delay in the performance of the Services resulting from the unavailability of an Authorised Person to provide approval.
- 8.3. For the purposes of this Agreement Written Approval shall mean approval signified by:
  - a) any fax, letter or purchase order on the Customer's notepaper bearing the signature of an Authorised Person;



- b) oral approval given by an Authorised Person provided this is in circumstances where time does not permit Written Approval and the oral approval is confirmed within one Working Day by a fax, letter or purchase order in accordance with the preceding sub-clause;
- c) e-mail emanating from the personal e-mail address of an Authorised Person.

- 8.4. myfamilygenealogy.co.uk; Robert Parker shall obtain the Customer's Written Approval of its Deliverables in draft format including but not limited to any resources requested in myfamilygenealogy.co.uk; Robert Parker proposal or terms and conditions of supply; and estimates or quotations of the cost of the various items and / or resources and other services together with terms of payment.
- 8.5. The Customer's Written Approval of the draft Deliverables will be myfamilygenealogy.co.uk; Robert Parker's authority to purchase resources as detailed in the proposal or terms and conditions.

**9. AMENDMENTS TO WORK IN PROGRESS**

- 9.1. The Customer may request myfamilygenealogy.co.uk; Robert Parker to cancel or amend any and all work in progress. myfamilygenealogy.co.uk; Robert Parker will take all reasonable steps to comply with any such request provided that the Customer is able to do so within its contractual obligations to third party suppliers.
- 9.2. In the event of any such cancellation or amendment the Customer will reimburse myfamilygenealogy.co.uk; Robert Parker for any charges or expenses incurred by myfamilygenealogy.co.uk; Robert Parker to which myfamilygenealogy.co.uk; Robert Parker is committed. The Customer shall also pay myfamilygenealogy.co.uk; Robert Parker's Charges covering the cancelled or amended Services as well as any charges imposed on myfamilygenealogy.co.uk; Robert Parker by third parties arising from the cancellation or amendment.

**10. WARRANTIES AND INDEMNITIES**

- 8.1 If there is an error in the Deliverables as published or publication is delayed or does not occur as planned, myfamilygenealogy.co.uk; Robert Parker will not be liable unless this is caused by its default or neglect.
- 8.2 The Customer warrants that to the best of its knowledge information and belief all Customer Information supplied to myfamilygenealogy.co.uk; Robert Parker before and during the Term will be accurate and not in any way contrary to English law.
- 8.3 myfamilygenealogy.co.uk; Robert Parker warrants that having taken such legal advice and undertaken such searches as myfamilygenealogy.co.uk; Robert Parker considers reasonably necessary, to the best of its knowledge and belief any Deliverables produced by myfamilygenealogy.co.uk; Robert Parker as part of the Services will be



original to its authors, has not been previously published in any form in the United Kingdom (the "UK"), will not infringe the copyright of any third party in the UK and will not contain anything obscene, blasphemous, libellous or otherwise unlawful in the UK other than as contained in any legal or other advice communicated to the Customer.

- 8.4 The Customer accepts full legal responsibility in respect of any Deliverables approved by it for publication and will indemnify myfamilygenealogy.co.uk; Robert Parker in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the Deliverables by the Customer for advertising purposes.
- 8.5 myfamilygenealogy.co.uk; Robert Parker warrants that its personnel working on the Services are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to perform the Services.

**11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 11.1. Nothing in the Contract shall limit or exclude myfamilygenealogy.co.uk; Robert Parker's liability for:
  - a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - b) fraud or fraudulent misrepresentation; or
  - c) any other liability which cannot be limited or excluded by applicable law.
- 11.2. Subject to clause 11.1, myfamilygenealogy.co.uk; Robert Parker shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - a) loss of profits;
  - b) loss of sales or business;
  - c) loss of agreements or contracts;
  - d) loss of anticipated savings;
  - e) loss of use or corruption of software, data or information;
  - f) loss of damage to goodwill; and
  - g) any indirect or consequential loss.
- 11.3. Subject to clause 8.1, myfamilygenealogy.co.uk; Robert Parker's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.





- 11.4. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.5. This clause 8 shall survive termination of the Contract.

## **12. TERMINATION**

- 12.1. Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.
- 12.2. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3. Without limiting its other rights or remedies, myfamilygenealogy.co.uk; Robert Parker may terminate the Contract with immediate effect by giving written notice to the Customer if:
- a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified to make such payment; or
  - b) there is a change of Control of the Customer.
- 12.4. Without limiting its other rights or remedies, myfamilygenealogy.co.uk; Robert Parker may suspend provision of the Services under the Contract or any other contract between the Customer and myfamilygenealogy.co.uk; Robert Parker if the Customer becomes subject to any of the events listed in clause b to clause d or myfamilygenealogy.co.uk; Robert Parker reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.



### **13. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- a) the Customer shall immediately pay to myfamilygenealogy.co.uk; Robert Parker all of myfamilygenealogy.co.uk; Robert Parker 's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, myfamilygenealogy.co.uk; Robert Parker shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, then myfamilygenealogy.co.uk; Robert Parker may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- d) clauses which expressly or by implication survive termination shall continue in full force and effect.

### **14. GENERAL**

14.1. **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

#### **14.2. Assignment and other dealings.**

- a) myfamilygenealogy.co.uk; Robert Parker may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- b) The Customer shall not, without the prior written consent of myfamilygenealogy.co.uk; Robert Parker, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

#### **14.3. Confidentiality.**

- a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs,



customers, clients or suppliers of the other party, except as permitted by clause b.

- b) Each party may disclose the other party's confidential information:
  - to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and
  - as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.4. **Entire agreement.**

- a) This agreement constitutes the entire agreement between the parties (including any product specific terms and conditions; for example Courses Terms and Conditions) and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.5. **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.6. **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- a) waive that or any other right or remedy; or
- b) prevent or restrict the further exercise of that or any other right or remedy.

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



**14.8. Notices.**

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause a; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

14.9. **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.

14.10. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

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

18 April 2018