

## **TERMS & CONDITIONS 2019**

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## 1. Interpretation

In this Licence:

“**Comsec**” means Comsec Investigations Limited (Comsec) registered in England No 05198213, including its authorised sub-Licenceors and agents, who provide elements of the Service under Licence to Comsec.

“**Authorised Users**” means the Customer, its Directors, authorised officers, employees and authorised consultants.

“**Fee**” means the Fee included within the Letter of Engagement.

“**Licence**” means these Conditions in accordance with the Letter of Engagement.

“**Customer**” means the person named in the letter of engagement or during the ordering/registration process. Comsec may accept instructions from anyone whom Comsec reasonably believes is acting with the Customer’s authority or knowledge.

“**Customer Information**” means data and any other materials (in whatever form) published or otherwise made available (directly or indirectly) by or on behalf of the Customer by using the Service. Customer Information may include information about the Customer (including individual employees or its representatives) or the Customer’s Authorised User, which may include personal data subject to laws or regulations.

“**Data Subject**” has the meaning given under the Data Protection Act 1998.

“**Helpdesk**” means the Technical Support provided by Comsec to handle enquiries and administration for the Service.

“**Operational Service Date**” means the date when Comsec confirms to the Customer that the Service is available for use or the date when the Customer first starts to use the Service, whichever is the earlier.

“**Comsec Engagement Letter**” means the schedule to this Licence detailing amongst other things the fees for the Service, minimum charges and other details of the Service.

“**Service**” means the Service or, where appropriate the Services or part of the Service described in the Letter of Engagement.

“**System Administrator**” means the individual authorised by the Customer to manage the configurable aspects of the Service including but not limited to management of Authorised Users.

“**Watchdog**” means an online automated tool used to monitor infringement sales on eBay and other online platforms. Our clients provide us with their intellectual property details and Watchdog automatically searches the internet for any relevant references. From here reports are generated and takedown notices can be sent either by the client or by Watchdog itself requesting the vendor ceasing trading.

“**Reference Databases**” means the online platforms that “Watchdog” monitors for example; eBay, Amazon, Gumtree etc. (as stated in the Letter of Engagement).

## 2. Duration

This Licence begins on the date the Engagement Letter is signed by both parties or from the date Comsec accepts the signed Engagement Letter. This Licence will continue until terminated in accordance with this Licence.

## 3. Provision of the Service

3.1 Comsec will provide the Customer with the Service on the terms of the Licence. Only persons employed or Licensed by the Customer will have access to the Watchdog Service and the data contained therein.

3.2 Comsec will use all reasonable endeavours to provide the Service by the date agreed with the Customer, but all dates are estimates and Comsec has no liability for any failure to meet any date, unless the Letter of Engagement states otherwise.

3.3 Comsec will use all reasonable efforts to provide uninterrupted Service but from time to time faults may occur which Comsec will repair as soon as is reasonably possible.

3.4 Occasionally Comsec may:

(a) for operational reasons change the technical specification of the Service, provided that any change to the technical specification does not materially reduce the performance of the Service;

(b) give the Customer instructions that it believes are necessary for reasons of health, safety or the quality of Service provided by Comsec to the Customer or any other Customer;

(c) suspend the Service for operational reasons such as repair, maintenance or improvement or because of an emergency. Please note that 1 Days' notice will always be given for any **planned** maintenance; which is always carried with the least disruption to services IF carried out at all during working hours.

In the event the Service becomes unavailable to the Customer, for any reason other than Force Majeure, for more than 48 hours from the point that the Customer has reported in writing to Comsec that the Service being unavailable, Customer shall receive a credit equal to one-thirtieth (1/30th) of the monthly subscription fee specified in the Letter of Engagement for each additional 24-hour period (beyond such first 48 hours) during which the Service remains unavailable. This credit will be applied to Customer's first monthly billing following the period of unavailability.

3.5 With the exception of the Services described as being provided by Comsec in the Letter of Engagement, the Customer is responsible for providing suitable computer hardware, software and telecommunications equipment and Services necessary to access and use the Service.

3.6 This Licence does not include the provision of telecommunications Services necessary to connect to the Service.

## 4. Security

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- 4.1 The Customer is responsible for the security and proper use of all user identities (user IDs) and passwords used in connection with the Service and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people. For the avoidance of doubt the Customer will be responsible for all charges for the Service where the user ID has been used to access the Service.
- 4.2 The Customer must immediately inform Comsec if there is any reason to believe that a user ID or password has or is likely to become known to someone not authorised to use it or is being used or is likely to be used in an unauthorised way.
- 4.3 Comsec reserves the right to suspend user ID and password access to the Service if at any time Comsec reasonably considers that there is or is likely to be a breach of security or misuse of the Service.
- 4.4 Comsec reserves the right at its sole discretion to require the Customer to change any or all of the passwords used by the Customer in connection with the Service.
- 5. Use of the Service**
- 5.1 The Customer shall only access the Service as permitted by Comsec and shall not attempt at any time to circumvent system security or access the source software or compiled code.
- 5.2 The Service is provided solely for the Customer's own use and the Customer will not resell or attempt to resell the Service (or any part or facility of it) to any third party without prior permission.
- 5.3 The Service is protected by copyright, trademark and other intellectual property rights, as applicable. The Customer must not and must not permit anyone else to copy, store, adapt, modify, transmit or distribute the Service except to Authorised Users.
- 5.4 The Customer shall be responsible for the creation, maintenance and design of all Customer Information.
- 5.5 The Customer must ensure that it complies with all consumer and other legislation, instructions or guidelines issued by regulatory authorities, relevant licences and any other codes of practice which apply to the Customer and which relate to the provision of Customer Information, in each country where the Service is provided.

- 5.6 If the Customer uses:
- (a) the Service in contravention of paragraphs 5.1 to 5.6 or
  - (b) the Service made available to it in any way which, in Comsec's opinion is, or is likely to be, detrimental to the provision of the Service to the Customer or any other Customer and fails to take corrective action within a reasonable period of receiving notice from Comsec, we may treat the contravention as a material breach of this Licence which cannot be remedied for the purposes of paragraph 13.
- 5.7 The Customer must indemnify Comsec against any claims or legal proceedings which are brought or threatened against Comsec by a third party because:
- (a) the Service is not used in accordance with this Licence due to acts or omissions of the Customer; or
  - (b) the Service is faulty or cannot be used by that third party due to acts or omissions of the Customer.

This indemnity will not apply to the extent that Comsec has caused Service-affecting faults. Comsec will notify the Customer of any such claims or proceedings and keep the Customer informed as to the progress of such claims or proceedings.

- 5.8 The Customer is responsible for the acts and omissions of all Authorised Users in connection with the Service and is liable for any failure by any Authorised User to perform or observe the terms and conditions of this Licence, including any instructions issued under the paragraphs above.

## 6. Intellectual Property Rights

- 6.1 The Customer acknowledges that all Intellectual Property Rights in the Service and documentation belong and shall continue to belong to Comsec Investigations Limited and the Customer shall neither have nor acquire through this Licence any rights in or to the documentation or the Service (or any software or other application, data or information comprising or forming part of the same). Other than the right to use the Service and documentation in accordance with the terms of this Licence.

## 7. Charges and Deposits

- 7.1 The Charges for the Service will be calculated in accordance with the Charges as detailed in the Letter of Engagement.
- 7.2 Comsec will invoice the Customer monthly in arrears.
- 7.3 The Customer will pay the charges within 28 days of the date of Comsec's invoice. Comsec may charge daily interest on late payments at a rate equal to 4% per annum above the base-lending rate of National Westminster Bank plc.

- 7.4 All charges will be invoiced and paid in pounds sterling. Value Added Tax or any other applicable tax in country sales or use tax or like charge in a country where the Service is provided which is payable by the Customer will be added to Comsec's invoices as appropriate.
- 7.5 The Customer acknowledges that the Customer may be subject to Comsec's credit vetting procedures and that Comsec may, at any time, require the Customer to pay a deposit or provide a guarantee as security for payment of future bills.

## **8. Limitation of Liability**

- 8.1 Comsec accepts unlimited liability for death or personal injury resulting from its negligence and paragraphs 8.2 and 8.3 do not apply to such liability.
- 8.2 Comsec is not liable to the Customer, either in Licence or otherwise for direct or indirect loss of profits, business or anticipated savings, nor for any indirect or consequential loss or damage or for any destruction of data, except as it arises from negligence on the part of Comsec.
- 8.3 Comsec's entire aggregate liability to the Customer in respect of all claims arising out of this or in conjunction with this Licence or its subject matter in any 12 month period (considered retrospectively from the date on which the cause of action arose) shall not exceed an amount equal to the sums received by or due to Comsec from the Customer under this Licence during that 12 month period.
- 8.4 Comsec excludes all liability of any kind in respect of Customer Information, Third Party Information, or any other material which can be accessed or acquired using the Service and is not responsible in any way for any goods (including without limitation products and software) or Services provided, promoted, advertised, sold or otherwise made available, or purchased or otherwise acquired by means of the Service or on the Internet.
- 8.5 Comsec is not liable to the Customer either in Licence or otherwise for the acts or omissions of providers of telecommunications or Internet Services (including domain name registration authorities) or for faults in or failures of their equipment.
- 8.6 Comsec has no liability whatsoever for the quality of the information provided by the Reference Databases accessed for the purposes of Identification Verification or for any decision made, action taken or any transaction entered into by any Customer.
- 8.7 Each provision of this Licence excluding or limiting liability operates separately. If any part is held by a court to be unreasonable or inapplicable, the other parts shall continue to apply.

## 9. Termination of this Licence by Notice

- 9.1 Either party may terminate this Licence on 28 days' notice, to the other unless otherwise specified in the Letter of Engagement.
- 9.2 If the Customer terminates this Licence, the Customer must pay any outstanding charges due.

## 10. Breaches of this Licence

- 10.1 Either party may terminate this Licence (in whole or in part) immediately on notice, if the other:
- (a) commits a material breach of this Licence, which is capable of remedy, and fails to remedy the breach within a reasonable time of a written notice to do so;
  - (b) commits a material breach of this Licence which cannot be remedied after 28 days written notice of the same has been served;
  - (c) is repeatedly in breach of this Licence; or
  - (d) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over its assets.
- 10.2 If any of the events detailed in the above paragraph occur because of the Customer, Comsec may, on giving prior notice but only where practicable, suspend the Service (in whole or in part) without prejudice to its right to terminate the Licence.
- 10.3 If this Licence is terminated by Comsec because of an event specified in paragraphs above relating to 'Breach of Licence', the Customer must pay Comsec any outstanding charges due.
- 10.4 If either party delays in acting upon a breach of this Licence that delay will not be regarded as a waiver of that breach. If either party waives a breach of this Licence that waiver is limited to that particular breach.
- 10.5 Upon termination of this Licence for any reason, Comsec shall:
- (a) at the Customer's option, either forthwith return to the Customer all copies of the personal data which it is processing or has processed upon behalf of the Customer, or destroy the same within 14 days of being requested to do so by the Customer; and
  - (b) cease processing personal data on behalf of the Customer.

## 11. Changes to this Licence

- 11.1 (a) Except in the circumstances described in paragraphs 'Provision of the Service' if either party wishes to vary this Licence including the specification of the Service it must notify the other party in writing, detailing the proposed change and the reason for it.
- (b) The parties will discuss the proposed change.
- (c) Within a reasonable time of receipt of a proposed change, the receiving party will notify the other party in writing whether the proposed change is feasible and the likely financial, Licenceual, technical and other effects of the proposed change.

- (d) Within a reasonable time of notification of the effects of a proposed change the receiving party will advise the other party whether it wishes this Licence to be amended to incorporate the change.
- (e) Where the parties agree a change to this Licence it will be recorded in writing and will form part of this Licence when signed by both parties.

## 12. Confidentiality and Publicity

12.1 The parties will keep in confidence any information (whether written or oral) of a confidential nature (including software and manuals) obtained under this Licence and will not disclose that information to any person (other than their employees or professional advisors, or in the case of Comsec, the employees of Comsec who need to know the information without prior written consent of the other party.)

12.2 This paragraph 12 will not apply to:

- (a) any information which has been published other than through a breach of this Licence
- (b) information lawfully in the possession of the recipient before the disclosure under this Licence
- (c) information obtained from a third party who is free to disclose it; and
- (d) Information which a party is requested by law to disclose and if it did not could be required to do so by law.

12.3 This paragraph 12 will remain in affect for two years after the termination of this Licence.

## 13. Assignment

Either party may transfer any of their rights or obligations under this Licence, with prior written consent of the other, such consent not to be unreasonably withheld or delayed.

## 14. Force Majeure

Comsec shall not be in breach of this Licence nor liable for delay in performing, or failure to perform, any of its obligations under this Licence if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 28 days for then the Customer may thereafter terminate this Licence by giving 28 day's written notice to Comsec.

## **15. Entire Agreement**

- 15.1 This Licence together with the Letter of Engagement contains the whole agreement between the parties and supersedes all previous written or oral agreements relating to its subject matter.
- 15.2 The parties acknowledge and agree that:
- (a) they have not been induced to enter into this Licence by any representation, warranty or other assurance not expressly incorporated into it; and
  - (b) in connection with this Licence their only rights and remedies in relation to any representation, warranty or other assurance are for breach of this Licence and that all other rights and remedies are excluded, except in the case of fraud.
- 15.3 A person who is not party to this Licence has no right under the Licences (rights of third parties) Act 1999 to enforce any terms of this Licence, but this does not affect any right or remedy of a third party which exists or is available apart from that act.

## **16. Notices**

Notices given under this Licence must be in writing and may be delivered by hand or by courier, or sent by first class post, facsimile or electronic mail to the following addresses:

- (a) to Comsec at the address of the Comsec offices shown on the Engagement Letter, or on the Customer's last invoice, or to the help desk by email or any alternative address which Comsec notifies to the Customer;
- (b) to the Customer at the address to which the Customer asks Comsec to send invoices or if the Customer is a limited company its registered office.

## **17. Data Protection Act 1998**

- 17.1 Both parties warrant that they will duly observe all their obligations under the Data Protection Act 1998 which arise in connection with this Licence. In particular, where Comsec processes personal data on behalf of the Customer, it will;
- (a) act on and comply with instructions of the Customer (as the data controller) as such instructions are given and varied by the Customer from time to time; and
  - (b) take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

- (c) Where a data subject exercises his or her right under the Acts in respect of personal data processed by Comsec on behalf of the Customer or where the Customer is required to deal or comply with any assessment, enquiry, notice or investigation by the information commissioner, then Comsec will cooperate as requested by the Customer to enable the Customer to comply with the obligations of the Customer (as data controller) under the acts which arise as a result of the exercise of such rights or as a result of such assessment, enquiry, notice or investigation; and
- (d) Comsec will cooperate with the Customer to the extent permitted by Comsec's security policies and procedures to enable it to monitor compliance with the obligations referred to in this paragraph 18.1.
- (e) All data collected by Watchdog shall remain the property of the Customer who retains the right to extract, manipulate and reproduce this data for the purposes of reporting, strategising and planning internally.

#### 17.2 The Customer is responsible for

- (a) obtaining the informed consent (permission) of the data subject prior to the identity verification being performed. Such informed consent to include the access, use and storage of any identity verification or check made against the data subject and/or any other obligation required under the Data Protection Act 1998 for these purposes. Where the data subject is using a web site an appropriate form of words must be included to obtain the consent on the website with a 'click to accept' button to confirm the informed consent. Where the data subject calls into the Customer call centre the Customer agent/Customer relationship manager (CRM) system shall inform the data subject and obtain the appropriate informed consent; and
- (b) providing an audit trail of all informed consents received from its Customers under (a) above.

17.3 By entering into this Licence, the Customer grants Comsec and its agents processing data on Comsec's behalf, permission, in accordance with the Data Protection Act 1998, to send the Customer unsolicited advertising and promotional material pertaining to other Comsec products and services. The Customer may revoke this permission by giving written notice to Comsec.

#### 18. Law

This Licence is governed by the Laws of England and both parties submit to the exclusive jurisdiction of the English Courts.