

## Standard Terms and Conditions

### 1. Interpretation

#### 1.1 Definitions:

**Agreement:** the agreement between the Customer and the Supplier for the supply of the Services be that in written or verbal form.

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

**Charges:** the charges payable by the Customer for the supply of the Services by the Supplier, are those in the Standard Rate Card for the relevant year or as agreed separately in writing.

**Contract:** shall be the terms within this document and any variations agreed in writing by the Customer and Supplier unless superseded by a written contract signed by the Customer and the Supplier.

**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 Materials:** all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

**Deliverables:** all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) and the Key Deliverables set out in the Contract Details.

**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, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier.

**Services Start Date:** the day on which the Supplier starts provision of the Services

**Supplier IPRs:** all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them.

## 1.2 **Interpretation:**

- (a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email but not fax.

## 2. **Commencement and term**

The Contract shall commence on the date when the Services are first provided by the Supplier to the Customer and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 1 months' written notice to terminate.

## 3. **Supply of services**

3.1 The Supplier shall supply the Services to the Customer as requested by the customer in written or verbal form.

3.2 In supplying the Services, the Supplier shall:

- (a) perform the Services with reasonable care and skill;
- (b) perform the Services in accordance with the agreement with the Customer;
- (c) use industry best practice in the care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials 6 months after supplying the Services.

## 4. **Customer's obligations**

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier;

- (c) provide, in a timely manner, such information and personnel as the Supplier may reasonably require, and ensure that information is accurate and complete in all material respects.

4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any reasonably and properly additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

## **5. Intellectual property**

5.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

5.2 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

## **6. Charges and payment**

6.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 6.

6.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

6.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer once or twice monthly in arrears. Each invoice shall include all reasonable supporting information required by the Customer.

6.4 The Customer shall pay each invoice due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.

6.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 8 (Termination):

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the base rate set by the Bank of England from time to time, but at 8% a year for any period when that base rate is below 0%; and
- (b) the Supplier may suspend all Services until payment has been made in full; and
- (c) the Customer shall not be entitled to any previously agreed discounts on new invoices issued eight or more business days after the payment due date.

6.6 All amounts due under the Contract from the Customer to the Supplier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **7. Limitation of liability**

7.1 Nothing in the Terms shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Supplier 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 or damage to goodwill; and
- (g) any indirect or consequential loss.

- 7.3 Subject to clause 7.1, the Supplier'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 ten per cent (10%) of the average annual Charges (calculated by reference to the Charges in successive 12-month periods from the Services Start Date) paid by the Customer.
- 7.4 The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

## **8. Termination**

- 8.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it 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 which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after 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 the terminating party, acting reasonably, is of the opinion that the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 On termination of the Contract for whatever reason:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
  - (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect; and
  - (c) termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of

termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

## **9. General**

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

### **9.2 Assignment and other dealings.**

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

### **9.3 Confidentiality.**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of one year 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 9.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) 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 9.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

### **9.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties 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 acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

9.5 **Variation.** No variation of the Contract shall be effective unless it is in writing.

9.6 **Waiver.**

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

9.7 **Severance.** If any provision or part-provision of the Agreement 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.

9.8 **Third party rights.**

- (a) These Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

9.9 **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 Scotland.

9.10 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland 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.