

### 1. OUR AGREEMENT

- a. These Terms of Business supplement the agreement set out in a Booking. They do not give rise to any right for either of us to require a further Booking.
- b. We will start work when you accept our Booking. You can accept by letting us know that you accept, or by asking us to start work. No-one can process Personal Data for you until you have given written data processing instructions. Please complete the Data Processing Form with this Agreement or use your own data processing instructions.
- c. The Services to be provided are set out in the Booking. They can be amended by exchange of emails or by issuing a revised Booking.

### 2. EXPECTATIONS

- a. Quality standards that are unique to the project are set out in the Booking.
- b. The work is normally undertaken at our premises. When asked to travel to other premises, travel time and travel expenses will be charged.
- c. Our objectives, expressed in general terms, will be:
  - To support your business;
  - To understand your key timings.
- d. In order for us to achieve the best results for you, we need your active co-operation. Specifically, you should:
  - Promptly provide the resources you are responsible for;
  - Provide clear guidelines for the tasks required.
- e. We will normally provide all equipment needed to perform the Services. We will set out in the Booking any items are chargeable to you.
- f. **Insurance:** If we carry professional indemnity or IR35 insurance, we set out the amount we are insured for in the Booking form. If that field is blank that means we are not currently insured. If you wish us to take out insurance or additional insurance, we are happy to do so if you agree to pay the additional cost. Normally this is an annual cost, and it may not be possible to refund the charge if you do not use us for the exact year that our insurance runs. You can ask us for a copy of our current certificates of cover and policy terms.

### 3. BUSINESS ARRANGEMENTS

- a. Our Services are provided on a 'business-to-business' basis.
  - The way we work is part of our trade know-how and shall not be under your direction or control.

- We shall continue to market our services and work for other clients and maintain an independent business of our own.
- b. **Authority:** The person named in the Booking will be our main contact and has the authority to agree payments and to agree changes to a Booking. We will not order any goods or services on your behalf unless it is authorised by that person.

#### 4. BUSINESS CONTINUITY AND RESILIENCE

- a. **Holiday, sickness and emergency cover:** We may nominate one or more substitutes for holiday and sickness cover. These will be given the necessary access when they are about to be used.
- b. **Expertise and focus:** From time to time we may use experts to supplement our own expertise where such expertise is needed and not provided via a 3rd party contracted directly with you.
- c. **Availability and deadlines:** We may delegate elements of your work, or entire projects to suitably qualified members of our team to provide appropriate depth of resources to meet your business deadlines.
- d. All our team are contracted to confidentiality and appropriate GDPR standards where necessary.

#### 5. TIMING AND STANDARD OF PROVISION OF SERVICES

- a. We will use our reasonable endeavours to deliver Services according to the timetable described in the Booking. Where work is undertaken by retainer you must specify your priorities and deadlines in line with the number of hours/posts that you have purchased. We will let you know if we expect that campaign or other deadlines may not be met.
- b. If you want more work than the time/posts you have purchased, you need either to scale back your requirements or purchase more hours/posts subject to availability.
- c. **Timetables:** Our ability to meet timetables depends on your giving us access in good time to all the information or resources we need from you. If you are late with information or resources, we reserve the right to reschedule Services or you may simply have lost that period of posting. There is no automatic right to roll over posts from an earlier period.
- d. **Availability:** Our normal working hours are displayed on our web site, and/or set out in the Booking. Availability outside these hours cannot be guaranteed without agreement in advance, and work outside those availability hours will be subject to additional work surcharges. We are not available over the weekend or on Bank and Public Holidays unless expressly agreed.
- e. **Proof reading and sign off:** While we do everything we can to ensure the accuracy of the work we do for you, the final sign off rests with you and it is your responsibility to check the work before it goes out.

## **6. FEES, PAYMENTS AND EXPENSES**

- a. Fees and expenses are charged in accordance with the Booking. Out-of-pocket expenses (including travel, stock pictures, videos and music, USBs, DVDs, CDs) will be charged as an additional charge. Where applicable VAT will be charged at the appropriate rate.
- b. Normal hours of work and availability are set out in the Booking form. For work outside these hours, an additional rate may be applied as set out in the Booking form or 150% of the hourly rate fee for time-based bookings (or the equivalent).
- c. For urgent work given at less than 24 hours' notice, an urgent work rate may be charged at the rate set out in the Booking, or, if none, at 150% of the hourly rate fee for time-based bookings (or the equivalent).
- d. Out of hours and urgent work rates may both be charged for the same work if it is both urgent and out of normal hours. We will apply the out-of-hours work surcharge to the normal hourly rate and then the urgent work surcharge to the resulting out-of-hours rate.
- e. Where the Booking is for a fixed fee retainer or project, additional work outside the scope of the original Booking will be charged at our normal hourly rate (subject to Clauses 6.b to 6.d above) unless stated otherwise in the Booking.
- f. We may agree to a maximum of 10% of unused hours or posts being carried forward provided our invoices are fully and promptly paid in accordance with our terms. Hours or posts carried forward must be used in the following month or they will be lost. Hours/posts carried forward from one month to the next will be used first before the month's retainer hours/posts.
- g. Deposits are due for payment before work commences. The non-payment of a deposit may delay starting the work even if you have accepted the terms and asked us to start. Payment means when cleared funds appear in our bank account.
- h. Payment is due as set out on the Booking or if not specified there within seven calendar days from the date on the invoice. If you do not pay by the due date, we may reschedule further work until payment is made. Additional charges may be levied for PayPal, credit card payments, specific payment methods – see Booking.
- i. We reserve the right to charge interest on overdue amounts at the rate set out in the Booking, or where the Booking does not specify at the rate of 2.22% per month (equivalent to unauthorised overdraft rate from the bank). Subsequent payments will be applied to interest and finance charges first, and then applied to fees/costs outstanding.
- j. Any time and expenses incurred in responding to your requests to audit data for GDPR compliance or complying with an external legal body's legal requirements to disclose information or submit to audit may result in charges at our normal hourly rate (or the equivalent) for the work incurred.
- k. Upon termination of a Booking further time-based charges may be incurred in handing over, returning, data, or responding to enquiries. This would be charged at our normal hourly rate or the equivalent.

- l. If you specify that we should securely store data for you in our software or systems for longer than six weeks after the termination of a Booking, we reserve the right to charge for this storage and securing at the rate of £500 a year or such other amount as specified in the Booking.
- m. We have quoted our fees on the basis of a business to business arrangement where we are entitled to be paid our fees without deductions.
- If you make any tax withholding or deduction of PAYE and/or NI from the face value of our invoices; and/or
  - If by your action or inaction you bring our Booking within scope of IR35 or any other tax obligation that results in the need for you to make deductions at source; and/or
  - If you insist that we work under an umbrella company (so requiring us to bear the burden of charges and fees),

then the invoice amount(s) will automatically be adjusted upwards to ensure we receive payment of the face value of the original invoice(s) and/or fees as quoted on the Booking. We may also charge you for umbrella company and other associated costs, including and not restricted to National Insurance.

Bookings will be upwardly adjusted from that point onwards so that the nett receipts against the invoice match the value in the original Booking and/or quotation for the work.

- n. We shall deduct and pay over to HMRC any tax and national insurance that may be required under any tax obligation imposed on us. If you are involved in a dispute with HMRC over who should be paying such tax, we will produce the relevant receipts and other existing paperwork to help you reduce or resist the demand.
- o. **Time-based Bookings only:** Time-based bookings are charged in 15-minute slots, so a five-minute call may incur a 15-minute charge if this is a unique call during the day. Fees will be subject to a minimum one-hour charge on days when work is required.
- p. We have some software and equipment we use at no additional charge to you. But where we need license fees or usage fees to provide support for you, we will charge you the cost of any licenses you have authorised us to purchase. We will normally provide all equipment needed to perform the Services. We will set out in the Booking (or Booking amendments) what they are and whether they are chargeable to you.

## **7. RIGHTS TO USE / COPYRIGHT**

- a. The Rights in work done under any Booking shall be ours. Upon payment of our fees and charges we will assign to you the Rights in Materials uniquely created under the Booking. We agree to sign any further documents needed to complete the transfer of those Rights to you. This will not include the Rights to any templates or structures or methodologies that we used to create Materials.
- b. Information and documents which we provide to you remain our absolute property unless and until assigned to you.

- c. You promise not to breach any third-party copyright, trade/service mark or privacy rights in sending us material to work on. You promise not to use any confidential or restricted information that belongs to someone else in sending us work.
- d. We will keep full records of the work that we have done for you and the contacts we have made with people on your behalf.
- e. We will not access, use, copy, distribute or publish any part of any information, data or documents created uniquely for you (once paid for), for our own or any other person's benefit or purposes.

## 8. POLICIES AND PROCEDURES

- a. **Resolving problems:** If there is anything about your project that is not going as you want, or if you have any query or complaint, speak to us straight away.
- b. **Health and Safety:** When working at our own premises, we are responsible for our own health and safety.
- c. **Working at your premises:** We may from time to time work at your premises and be covered by your health and safety policy.
- d. We handle Personal Data in accordance with our data privacy policy.
- e. Where a Booking involves the transfer of Personal Data outside the EU/EEA, you and we will enter into and be bound by a Non-EU/EEA Model Clauses agreement.

## 9. CONFIDENTIAL INFORMATION

- a. **Your information and our confidentiality:** You may need to share Confidential Information with us. It may be business information or information about individuals (which is also covered in Clause 10 below). We will only use Confidential Information that you send us to perform the Services set out in the Booking or if we are required to disclose it by law. We may keep some Confidential Information to keep a record of what we did for you. We will keep personal data in line with our data retention policy (a copy of which can be found with our data privacy policy).
- b. **Documents and information:** We will need to agree with you a safe and secure system of you sending us your confidential documents and information (and us returning them to you). We are not liable for data that is not securely transmitted to us.
- c. **Log-ins:** Where you wish us to access systems that contain information that identifies living individuals, you should provide us with a unique log in to your existing software platforms and systems.
- d. Where multi-user log ins are not available you will securely share passwords through password lockers and change those passwords at appropriate intervals.
- e. We will not set up any social media or email account or fan/group/web/ forum pages using our name or our brand name(s), or for people to respond to unless your Booking specifically says so. The default user will be set up using your information and contact details unless you specify otherwise.

- f. Note that we may make and keep temporary backups to ensure continuity of service.

## **10. DATA PRIVACY**

- a. We will process your own Personal Data in line with our data privacy policy.
- b. When you want us to access or use Personal Data about someone other than you (3rd party data), you must have completed the appropriate Data Processing Form and send a copy by email from your usual business address. While processing personal data in the provision of Services, we will be acting as 'data processor' for you, and you are the 'data controller'.
- c. We will process 3rd Party Data on your behalf only in response to your written instructions (which may be in the Booking, Data Processing Form, or in separate email or document) except where we are required by law to do so.
- d. We are subject to a duty of confidence (see Clause 9.a and Clause 4.d (in relation to our team)).
- e. We will take appropriate measures to ensure the security of our Processing of your 3rd Party Data.
- f. We will assist you in allowing 3rd parties to exercise any of their Data Privacy rights (including subject access). This will result in additional time-related charges (see Clause 6 above).
- g. We will apply the security measures you set out in the Data Processing Form for protecting and securing your data.
- h. We will email you if we become aware of a Personal Data Breach. We will assist you in your investigations in establishing how this occurred. We will assist you, as you may reasonably require, in meeting your Data Privacy obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments. This will result in additional time-related charges (see Clause 6 above).
- i. On written request by you, we will delete or return all 3rd Party Data supplied by you or assembled by us in the course of delivering Services to you. This will result in additional time-related charges (see Clause 6 above).
- j. Unless the Data Processing Form specifies otherwise, we will delete all 3rd party data supplied by you from systems within our control within six weeks of the end of the Booking without returning copies to you; we will not remove data from systems you have given us access or log-ins to, since those systems will remain under your control and we would expect you to be removing our access to them after the end of a Booking.
- k. If you wish us to store 3rd Party Data beyond the termination of the Booking and the six-week run on, you must specify this in the Data Processing Form. This will result in additional time-related charges (see Clause 6 above).
- l. You may audit and inspect how we handle your 3rd party data. We will provide you with whatever information you need to ensure that the relevant Data Privacy obligations are being met; this will result in additional time-related charges (see Clause 6 above).

- m. We will tell you immediately if we believe we are asked to do something infringing Data Privacy law. We are not legal experts and it is up to you to take appropriate legal advice on how to comply with Data Privacy rules and regulations.
- n. If you have instructed us to do something we believe is not within the law, we reserve the right to take advice from the Information Commissioner's help line and to act in accordance with their indications or advice.
- o. If you direct us to perform work that is counter to ICO indications or advice, we may seek a deposit from you against the likelihood of fines or other action being taken against us. We may specify such sum as we think is appropriate.
- p. It is always your responsibility to specify suitably secure platforms and processes and to share data with us in a secure way.

## 11. RESTRICTION AND LIMITATION

- a. Whilst working with us, you may be working with our associates and employees who support us. They are all under contractual terms that prohibit them from working directly for our clients other than through us, and you must not participate in them breaching their obligations to us. If you want one of our team to work directly for you, we would consider releasing them from their contractual obligations for a suitable fee representing the all-in cost of locating, recruiting and training a substitute and our loss of profit during this period.
- b. We will not be liable for failure to provide services where it is not reasonably practicable to do so due to circumstances beyond our control.
- c. **Indemnity:** You will indemnify us against any fines, costs, expenses, losses or other harm that comes to us from following any unlawful instruction or instruction to act in an unlawful way that was given by you.
- d. **Limitation of liability:** Our fee rates are determined on the basis of the limits of liability set out in the next four paragraphs. You may request that we agree to a higher limit of liability (provided insurance cover can be obtained therefor) in which case our fee rates may be adjusted, or an additional charge may be made.
- e. There shall be no personal liability of any of our principals, directors, partners, employees, agents or sub-contractors arising in any way out of the performance or non-performance of services or relating to the supply of products.
- f. We shall have no liability for any indirect or consequential losses or expenses suffered by you, however caused, including but not limited to loss of anticipated profits, goodwill, reputation, business receipts or contracts, or losses or expenses resulting from third party claims.
- g. Our aggregate financial liability to you shall not exceed the pro rata fees paid for the action(s) which gave rise to such liability.
- h. Nothing in these Terms shall be interpreted as excluding or restricting any legal liability on us or others where liability cannot legally be excluded or restricted.

## **12. TERMINATION**

- a. Bookings end on the completion date specified in the Booking or on completion of the work whichever is earlier.
- b. Either party may terminate a Booking summarily at any time by giving notice in writing to the other party if:
  - the other party commits a material breach of agreement and such breach is not remediable;
  - the other party commits a material breach of agreement which is not remedied within 14 days of receiving written notice of such breach and requiring its remedy from the injured party;
  - any consent, licence or authorisation held by the other party is revoked or modified such that the other party is no longer able to comply with its obligations under the Booking or receive any benefit to which it is entitled; or
  - the other party is subject to any procedure or takes any action relating to their potential insolvency or winding up or being placed into administration or entering into a creditors' voluntary arrangement or any other process reasonably indicating to the first party that the other party will not be able to meet its obligations under the Booking as they fall due.
- c. Terminating a Booking shall not affect rights and obligations already accrued.
- d. Any work done after termination of a Booking or this agreement will be charged at the normal hourly rate or equivalent. This will include responding to emails, returning information, finding information, or any other action taken as a result of an email or telephone call from you or the workgroup normally assigned to give instructions to us. If you wish to avoid this, please remove us from all email groups and email correspondence and make no further requests for action or information. Termination of a Booking will not invalidate such charges and invoices should be paid in accordance with these Terms.

## **13. DEFINITIONS AND LAW**

- a. In these Terms, the following words or phrases have the meaning set out in this clause.

"Booking"	an agreement that we will supply Services on specified occasions and/or with a specified outcome as set out in a Booking Form or in a formal proposal.
"Clause"	a numbered clause of these Terms of Business.
"Confidential Information"	all information: <ul style="list-style-type: none"><li>- that we discover because of or through our connection with you; and</li><li>- which is about or relating to you or your business (including financial information, products, services, service levels, customer satisfaction,</li></ul>



proposed services and products, pricing, and margins) or your people (including your directors or partners, investors, staff, suppliers, customers, clients, prospects and contractors).

However, Confidential Information does not include information that is openly published by you, or information that is publicly available without breach of our confidentiality obligation.

"Data Privacy"	refers to applicable provisions governing the processing of personal data, as amended or varied or replaced from time to time, including the Data Protection Act 2018, the EU General Data Protection Regulation 2016/679, the e-Privacy Directive 2002/58/EC, and the Privacy and Electronic Communications (EC Directive) Regulations 2003.
"Data Processing Form"	the Form completed by you setting out the framework of the processing of personal and other data required by the Booking.
"ICO"	the Information Commissioner's Office, being the data protection authority in the United Kingdom with respect to Data Privacy.
"including"	the word "including" shall not imply any limitation on the generality of the concept or thing of which examples are being given.
"Materials"	means written, audio and visual materials used or produced in the course of or to support delivery of Services, including handouts, videos, questionnaires, games, case studies, explanatory material, notes, calculations, specifications, reports, designs, drawings, flow charts, plans, reference material, prototypes.
"Non-EU/EEA Model Clauses agreement"	a separate agreement between the parties in a form approved by the European Commission for the cross-border transfer of Personal Data.
"Personal Data"	information about identifiable living individuals.
"Personal Data Breach"	breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, access to, or other unauthorised Processing of Personal Data.
"Processing"	when applied to personal data, the term 'processing' means any operation applied to the data, including

collecting, organising, storing, altering, retrieving, using, sharing and deleting it or any part of it.

"Rights"

includes:

- intellectual property rights including (but not limited to) copyrights, patents, registered designs, design rights, trademarks, service marks, and
- the right to apply for or register any such protection, and
- all rights relating to trade secrets and other unpublished information.

"Services"

the work to be supplied or the outcomes to be achieved by us, as set out in a Booking.

"3rd Party Data"

personal data about an individual other than you which is supplied by you to us.

"You"

refers to the person, firm or organisation for whom Services will be performed by us.

"We" and "us"

refers to the person, firm or organisation agreeing to provide Services.

- b. **No waiver:** If we or you delay or fail to enforce any term of a Booking or these Terms on any occasion, that will not affect or limit our or your ability to enforce that term on any other occasion or at any time.
- c. **Severability:** If any provision or part of a provision of a Booking or these Terms is unenforceable, word(s) shall be struck from the agreement to the minimum extent necessary to make the agreement enforceable and this shall not affect the enforceability of the other provisions of the agreement.
- d. **Law and jurisdiction:** All our agreements are governed by English law and subject to the exclusive jurisdiction of the English courts.