



TERMS OF BUSINESS

How we operate and service our clients^o



1. Definitions and interpretations

1.1. Within this Agreement the following words when used with a capitalised initial letter shall have the given meaning

‘Access Information’ means any username, password or other information required to access a restricted area of a website, server or platform.

‘Business Day’ means any day that the Bank of England is open for business.

‘Business Hours’ means 9am to 5.30 pm on any Business Day.

‘Counterparts’ means copies of this Agreement signed and exchanged separately or at a distance and when together shall act as a single document.

‘Execute’ means an act or action to initiate or commence this Agreement.

‘Intellectual Property’ means all rights, benefits and privileges provided in law or contract in relation to the ownership, protection and use of creative works, including but not limited to patents, trademarks, service marks, design and design rights, database rights, copyright, moral rights, know-how, trade secrets, trade or business names and any other industrial, proprietary or other similar protected rights (whether registered or not).

‘Force Majeure’ means any event preventing, delaying or hindering a Party from performing any or all of its obligations under this Agreement which cause is beyond the reasonable control of the Party so prevented, delayed or hindered including act of God, war, riot, civil commotion, act or omission of government, strike or industrial dispute, fire, flood, storm or natural disaster or failure of suppliers, interruptions to the flow of data, failure of telecommunications networks, or other technical issues that could not have been reasonably foreseen, prevented or predicted.

‘Materials’ means any image, text, video, music, script, code, illustration, document or file.

‘Person’ means a natural person, corporate body, company, partnership, firm, association, organization, business trust, or society.

‘Personnel’ means all employees, consultants, agents, freelance, sub-contractors or tradesmen engaged by the Service Provider to perform the Services.

‘Proposal’ means a written document containing the details and specifications for Services.

‘Purchase Order’ means a written order from the Client to purchase Services.

‘Quotation’ means a written document from the Service Provider containing the fees and charges for a Service.

‘Services’ means the works defined in clause 4.

‘Termination’ means the ending of this Agreement.



- 1.2.** Masculine shall include feminine and singular shall include plural, and vice versa unless expressly stated otherwise.
- 1.3.** A reference to the word 'includes' or 'including' shall not be limited by any list, option or choices that follow such words.
- 1.4.** A reference to 'written' or 'writing' shall mean any medium or format including electronic mail.
- 1.5.** Headings are for convenience only and shall not affect or interfere with the construction, intention or interpretation of the Agreement.
- 1.6.** References to laws, regulations, and acts of parliament shall include all amendments and variations.

2. General

- 2.1.** The Parties enter into this Agreement in the capacity of an independent business and in good faith.
- 2.2.** The Agreement will be Executed upon
 - 2.2.1.** both Parties applying their signatures which can include a copy or digital image of a signature, or the placing of any mark which is intended to represent a Party's signature; or
 - 2.2.2.** any act, action or conduct which accepts a Proposal or Quotation;
- 2.3.** Signed Agreements may be exchanged in Counterparts.
- 2.4.** Once Executed this Agreement shall be effective and valid until Terminated under clause 8; and implied into all agreements, arrangements or provisions for the Service Provider to supply Services to the Client.
- 2.5.** The Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, understanding or representations (written or oral) between the Parties in relation to its subject-matter.
- 2.6.** Both Parties acknowledge that in entering into this Agreement it has not relied on any statement, representation, understanding, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement, excluding Fraud.
- 2.7.** The Agreement can only be amended or varied
 - 2.7.1.** in writing by mutual consent; or
 - 2.7.2.** to comply with Laws, regulations, codes or standards; or
 - 2.7.3.** to comply with an order from a court of Law; or
 - 2.7.4.** to correct any material errors.
- 2.8.** Any documents or forms that are not expressly stated as forming part of this Agreement are for convenience and administrative purposes only and shall not affect, replace or supersede any provision of this Agreement.
- 2.9.** Where the Client would ordinarily operate under their own standard terms and conditions nothing within those standard terms and conditions shall supersede, replace or amend this Agreement and in the event of any conflict between the Client's standard terms and conditions and this Agreement then this Agreement shall always prevail.



- 2.10.** The Agreement does not create a partnership, joint venture, agency, representative, employment or fiduciary relationship.
- 2.11.** The Agreement and the benefits and obligations it creates cannot be transferred, assigned or novated except where either Party transfers the whole of their business to a third Party; and with the consent of the other Party, which will not be unreasonably withheld.
- 2.12.** This Agreement is only available in the English language, where it is translated into any other language the English version shall always prevail.

3. Proposals, Quotations and Purchase Orders.

- 3.1.** The Service Provider may, following initial discussions and negotiations complete the Particulars with the specific detail or issue a Proposal or Quotation for Services to be Provided; the Execution of this Agreement shall be deemed to be acceptance of a Proposal or Quotation and written acceptance of the Proposal or Quotation shall be deemed to be acceptance of this Agreement.
- 3.2.** A Proposal, Quotation or Purchase Order shall include
 - 3.2.1.** The Client's name and trading or registered address;
 - 3.2.2.** The Services required;
 - 3.2.3.** Any timeframe, deadline or milestones;
 - 3.2.4.** The charges and fees;
 - 3.2.5.** The payment terms;
 - 3.2.6.** Any other information that is relevant or necessary.
- 3.3.** At any time whilst this Agreement is effective the Client may request further Services and
 - 3.3.1.** the Service Provider may provide a written Proposal or Quotation to supply Services; or
 - 3.3.2.** the Client may issue a Purchase Order.
- 3.4.** The Client shall ensure all details within a Proposal, Quotation or Purchase Order are correct and accurately reflect the Client's requirements; the Client shall inform the Service Provider of any errors or inaccuracies, in the event that no such notice is given within 3 Business Days then the Proposal, Quotation or Purchase Order shall be deemed to be error free.
- 3.5.** The Service Provider may amend the fees and charges stated within a Proposal, Quotation, Purchase Order if at the time such is provided
 - 3.5.1.** it was not possible to assess or ascertain the full extent of the Services; or
 - 3.5.2.** incomplete or inaccurate information was provided by the Client; or
 - 3.5.3.** there are additional issues or requirements that were unknown or could not have reasonably have been known or foreseen; or
 - 3.5.4.** to correct a typographical, clerical or other error or omission.
- 3.6.** Where a Proposal, Quotation or Purchase Order includes a timeframe or scheduled date for the Services to commence or be completed, such will always be considered to be an estimate; time is not of essence to this Agreement.



4. The Services

- 4.1.** The Services to be provided under this Agreement shall be as detailed within the Particulars, a Proposal, Quotation or Purchase Order and may be for
- 4.1.1** Website design;
 - 4.1.2** Graphic design;
 - 4.1.3** Brand design;
 - 4.1.4** Digital marketing;
 - 4.1.5** Presentations;
 - 4.1.6** Advertising and marketing campaigns;
 - 4.1.7** Brochure, leaflets, stationary design and printing;
 - 4.1.8** Any other Services requested by the Client and agreed by the Service Provider;
- 4.2.** The Service Provider may assist the Client with determining what Services may be appropriate but such assistance shall not be, nor shall it be interpreted as advice, any decisions as to what Services are requested shall be solely of the Clients.
- 4.3.** The Service Provider may delegate or subcontract any of its obligations or performance of this Agreement to a third party however the Service Provider shall remain liable to the Client for the delegated or subcontracted obligations as if they were performed by the Service Provider.
- 4.4.** No Services shall be provided where those Services are used for unlawful or inappropriate purposes including but not limited to obscenity, racism, violence, harassment, malicious or harmful content, spamming, an infringement of privacy or Intellectual Property, the promotion or making available illegal products.
- 4.5.** Where the Services are for website design the following shall apply
- 4.5.1.** The Service Provider shall design and construct the Clients website using the most appropriate computer languages and incorporating scripts, applications, plug-ins, software and databases to provide the required functionality.
 - 4.5.2.** The website may be uploaded to a staging area of the Service Provider's own servers during the website's development and the Client may be provided with Access Information for reviewing, demonstration and testing prior to completion.
 - 4.5.3.** The Client may request and the Service Provider shall provide up to two sets of changes prior to completion, if any subsequent or additional changes are required then the Service Provider reserves the right to charge for those services.
 - 4.5.4.** The Client shall be responsible for maintaining the secrecy of any Access Information and the Service Provider shall not be responsible or liable in any way in the event of unauthorised access as a result of the Client's disclosure (whether innocently or negligently) of the Access Information.
 - 4.5.5.** Upon completion of the website, the Service Provider shall upload the website to a hosting server as directed by the Client or provide the files to the Client for the Client to install or upload the website themselves.
 - 4.5.6.** Websites shall be compatible and function correctly when viewed with popular devices and browsers at the time of design, compatibility with a non-standard browser or platform must be requested and agreed prior to the Services commencing.
 - 4.5.7.** Some elements of the website may be encrypted to prevent instability, loss of security or functionality through modification, reverse engineering or disassembly.
 - 4.5.8.** Any updates, modifications, advances or standards to devices, operating systems, browsers, platforms, software or languages after completion may affect the functionality of the website.



6. Intellectual Property

- 6.1.** For Materials created or designed by the Service Provider in delivering the Services
- 6.1.1.** all Intellectual Property rights, benefits and privileges shall be owned and retained by the Service Provider, however the Service Provider may, but is not obliged to sell, transfer and novate all Intellectual Property rights and privileges to the Client for an agreed fee.
 - 6.1.2.** Subject to the Client's performance of this Agreement the Service Provider hereby grants the Client a limited, nonexclusive, royalty free license to use all Materials created by the Service Provider in the performance of the Services to be downloaded, cached, viewed, printed, and distributed to the extent that the Client is able to make reasonable use of the Materials for the intended purpose.
 - 6.1.3.** The Service Provider may include and incorporate copyright notices and credits (moral rights) into any Material created by the Service Provider.
 - 6.1.4.** In the event that the Service Provider provides a choice of Materials, only approved and accepted Materials are subject to the grant of a license, all rejected or unused Materials shall remain the property of the Service Provider and cannot be used, reproduced, distributed, sold, shared, broadcast, printed or displayed in any way by the Client.
 - 6.1.5.** The Service Provider will never knowingly provide any material that will infringe the Intellectual Property rights of a third party but in the event that any Material created or provided by the Service Provider becomes subject to any complaint, claim or action as a result of an inadvertent breach the Service Provider shall at their own expense carry out any changes required or necessary to remedy the breach.
 - 6.1.6.** The Service Provider will hold harmless, protect, defend and indemnify (on a full indemnity basis) the Client and its employees, subcontractors, representatives, agents from any claim, action, damages, loss, tariff, fees, costs or expenses arising from the use of Material created by the Service Provider.
 - 6.1.7.** The Service Provider reserves the right to incorporate into the Materials any mark, software or technical measure (which may be encrypted) designed to protect and manage their Intellectual Property against unauthorised use, reproduction, copying, plagiarism, distribution, transmission, broadcast or access and where a mark, software or technical measure is incorporated the Client is prohibited from removing, disabling, editing, decompiling or disassembling such.
- 6.2.** Where third party Materials are used in delivering the Services; examples include Materials sourced from library providers, open source software, RSS feeds, Google maps etc.
- 6.2.1.** The Materials and the third party provider shall be identified within the Particulars or by way of written notice if use of the Materials is not known at the time of Execution of the Agreement;
 - 6.2.2.** The third party Materials shall be sublicensed to the Client;
 - 6.2.3.** Intellectual Property rights in such Materials shall be owned and retained by the third party and subject to license terms and conditions, limitations, exclusions and royalties of the third party.
 - 6.2.4.** It shall be the Client's responsibility to ensure that the third party's terms and conditions are complied with; the Client shall hold the Service Provider harmless and indemnify the Service Provider on a full indemnity basis against any claim, action, penalty or sanction for a breach of the Client of the license terms and conditions.
 - 6.2.5.** Nothing shall prevent the Client obtaining a license directly with the third party for any third party Materials used which may be under whatever terms and conditions the Client wish to negotiate or with a different license they wish to acquire.
- 6.3.** Where the Client provides any Material that is to be used by the Service Provider in providing the services
- 6.3.1.** The Client warrants and guarantees that they either own the Intellectual Property in the Material, or the Material is being used under license or with the permission of the Intellectual Property holder.



- 6.3.2.** The Client hereby grants the Service Provider a nonexclusive, royalty free license or sublicense to use all materials provided by the Client for the purposes of delivering the Services.
 - 6.3.3.** If any third party Material provided by the Client is subject to Intellectual Property restrictions or limitations it shall be the Clients responsibility to inform the Service Provider of those restrictions or limitations.
 - 6.3.4.** The Client will never knowingly provide any Material that will infringe the Intellectual Property rights of a third party but in the event that any Material provided by the Client becomes subject to any complaint, claim or action as a result of an inadvertent breach the Client shall at their own expense or subject to charges of the Service Provider carry out any changes required or necessary to remedy the breach.
 - 6.3.5.** The Client will hold harmless, protect, defend and indemnify (on a full indemnity basis) the Service Provider and its employees, subcontractors, representatives, agents from any claim, action, damages, loss, tariff, fees, costs or expenses arising from the use of Material provided by the Client.
- 6.4.** The Client agrees that the Service Provider and may use the Services as examples of their work in portfolios, advertising and promotional material. It is acknowledged that by including the work as examples the Client shall benefit from the publicity.

7. Fees and Charges

- 7.1.** In consideration for providing the Services, the Service Provider shall be entitled to charge, and the Client obliged to pay all fees and charges which become due under this Agreement.
- 7.2.** The Fees and charges may be –
 - 7.2.1.** a fixed rate;
 - 7.2.2.** an hourly or daily rate;
 - 7.2.3.** periodic or regular payments;
 - 7.2.4.** costs of obtaining or acquiring any materials or services from third parties required to achieve the desired or intended outcome;
 - 7.2.5.** third party fees and charges, including legal fees and court costs that are or become necessary to enforce the terms and conditions of this Agreement;
 - 7.2.6.** any other arrangement as agreed between the Parties;
- 7.3.** The Service Provider may require part or all of the fees and charges to be paid upon Execution of this Agreement or before any Services commence or in installments which may be attached to milestones being reached or achieved.
- 7.4.** The Service Provider shall issue an invoice for all fees and charges and the due date for payment shall be as stated in the Particulars or invoice.
- 7.5.** VAT at the applicable rate shall be added to the fees and charges.
- 7.6.** In the event that any fee or charge is not paid on or before the due date the Service Provider may
 - 7.6.1.** charge interest and late payment compensation in accordance with the Late Payment of Commercial Debts (interest) Regulations 1998;
 - 7.6.2.** withhold or suspend performance the Services;
 - 7.6.3.** recover the cost of any additional costs incurred third party costs in managing or recovering the fees due;
 - 7.6.4.** Terminate this Agreement;



8. Termination

- 8.1.** This Agreement may be Terminated
- 8.1.1.** by either Party giving notice of not less than 1 month;
 - 8.1.2.** upon completion of the Services;
 - 8.1.3.** for a material breach of this Agreement that is not, or cannot be rectified and remedied within 14 days of the non-breaching Party serving notice on the breaching Party;
 - 8.1.4.** should either Party become incapable of performing their obligations due to death, incapacity, bankruptcy, insolvency or winding up;
 - 8.1.5.** in the event that either Party is, or becomes involved in any criminal activity or convicted of a criminal offence and such activity or conviction is, at the other Party's sole discretion considered to be damaging or affects the trust or confidence of the other Party;
 - 8.1.6.** otherwise by mutual consent;

9. Effects of Termination

- 9.1.** Both Parties shall be relieved of their contractual obligations however Termination shall not affect or reduce any accrued right, obligations or benefit up to the date of Termination.
- 9.2.** If Termination is as a result of a breach of this Agreement by the Client, all fees and charges that would have become due had the Agreement been fully performed shall become due immediately.
- 9.3.** If Termination is as a result of a breach of this Agreement by the Service Provider, all fees and charges for Services that have been provided up to the point of Termination shall be payable and the Client shall receive a refund of all monies paid in advance for any undelivered Services.

10. Personal data

- 10.1.** The Client's details, information, data and records will be processed and stored in compliance with the Data Protection Act 1988 and the Service Provider shall not share, disclose, distribute or sell personal data unless it is necessary to fulfil the contractual obligations under this Agreement; or it is required to do so by Law or by an order of a Court; or under the instruction of or with the consent of the Client.
- 10.2.** Both Parties shall, at all times comply with all data protection regulations and authoritative guidance ('DPR') which control the collection, processing and storage of Personal Data, including the General Data Protection Regulations, the Data Protection Act 2018 and any other subsidiary, replacement or amended regulations.
- 10.3.** In the event that the any Party acts as a Data Processor or Sub-processor for the other Party's personal Data a document shall be agreed and signed containing the appropriate requirements under DPR.
- 10.4.** Where a Party processes any Personal Data of the other Party or its employees, agents, representatives, Clients or other personnel, the Party shall act in the capacity of a Data Controller or Data Processor and in accordance with DPR, in particular
- 10.4.1.** maintain an up to date database of Personal Data containing only Data Subjects where a lawful purpose for processing exists;
 - 10.4.2.** comply in all respects with the duties and obligations of a Data Controller and in full compliance with relevant DPR;
 - 10.4.3.** maintain registration and payment of any required fees or subscriptions as a Data Controller with the appropriate authorities;



- 10.4.4.** only process Personal Data to the extent necessary for the performance of this Agreement;
 - 10.4.5.** not sell, share, publish or otherwise distribute, delete or amend the Personal Data except
 - a)** Where required to do so by Law or order of a Court;
 - b)** when it is necessary for the prevention of fraud or other criminal activity;
 - c)** for the purposes of establishing, exercising or defending legal rights;
 - d)** if required to by a purchaser in the event of either Party selling their respective businesses;
 - e)** to a third party sub-processor, agent, representative, contractor or professional adviser to which Personal Data will be disclosed to enable the third party to perform its appointment, however the Party will ensure the third party is bound by a written contract containing provisions that mirror the obligations herein and any additional written instructions of the Data Controller;
 - 10.4.6.** Keep the Personal Data confidential and ensure that all employees, representatives, agents, Subcontractors, Sub-processors and suppliers who are involved in the processing of Personal Data are bound by a duty of confidentiality and have sufficient knowledge of DPR in order to comply with the requirements;
 - 10.4.7.** Take such security measures as are required to enable it to ensure that such Personal Data at all times remains secure, taking account of the type of Personal Data and potential level of damage which may be suffered by Data Subject in the event of a Data Breach; but without limitation, ensure that appropriate technical and organisational measures are taken to protect against unauthorised access, unlawful Processing, accidental loss or destruction to Personal Data;
 - 10.4.8.** Promptly inform the other Party and Data Subject of any Data Breaches as and when they occur irrespective of how minor or insignificant they appear at the time;
 - 10.4.9.** Shall do all that is necessary to comply with a request from a Data Subject exercising a right under DPR or requiring the rectification, blocking, erasure or destruction of any Personal Data;
- 10.5.** Either Party may appoint or use sub-processors, however if a sub-processor is based in a country outside of the E.U. then the Party must ensure the country is able to provide adequate provisions and assurances regarding the security of the Personal Data and any sub-processor who is not based in a country that provides or meets the recognised standards and thresholds, then the sub-processor must be subject to the model contract provided by the European Commission.
- 10.6.** Following termination of this Agreement, each Party
- 10.6.1.** may process Personal Data only for so long as is required or as may be necessary to bring or defend any legal proceedings or as is required by law or any regulatory body or recommended by any authoritative code of practice;
 - 10.6.2.** will not retain any copy, abstract, precis or summary of any Personal Data and will destroy its records and documentation accordingly;
 - 10.6.3.** Destroy all Personal Data upon expiry of any relevant limitation period set or established by law or regulation;

11. Complaints and disputes

- 11.1.** In the event that the Client is dissatisfied with any aspect of the Services the Client shall raise the matter in writing with sufficient detail to enable the Service Provider to understand the issues, in addition to the remedy being sought.
- 11.2.** The Service Provider shall endeavour to respond to a complaint within 5 Business Days, if the Service Provider needs more than 5 Business Days to investigate the complaint, or to gather all the relevant information then the Service Provider shall advise the Client when they anticipate providing a response, which shall not be more than 28 days.



- 11.3.** Where a complaint is accepted, the Service Provider shall effect the required remedy without delay or charge.
- 11.4.** Where a complaint is rejected or the remedy required by the Client is excessive or unreasonable the Service Provider shall inform the Client and include the reasons why that decision was made.
- 11.5.** The Parties shall attempt in good faith to resolve any disputed matters by negotiation between themselves or their appointed representatives, however if a remedy or resolution cannot be agreed the Parties shall refer the matter to mediation or arbitration by an independent third party and share the cost of mediation or arbitration.

12. Liabilities and indemnities

- 12.1.** Nothing in this Agreement will limit or exclude a Party's liability, and each Party shall fully and unconditionally indemnify the other Party against all and every type of expenses, costs, losses or damages incurred, received or suffered whether in law, statute, equity, contract or tort resulting from
 - 12.1.1.** death or personal injury resulting from negligence;
 - 12.1.2.** fraud or fraudulent misrepresentation;
 - 12.1.3.** breach of third party Intellectual Property rights;
 - 12.1.4.** breach of data protection regulations;
 - 12.1.5.** in any other way that is not permitted under applicable law.
- 12.2.** Subject to clause 12.1 neither shall be liable to the other for
 - 12.2.1.** special, indirect, consequential, exemplary and punitive damages; or
 - 12.2.2.** loss of business, opportunity, goodwill, reputation, profits, income, revenue, use, production or anticipated savings;
 - 12.2.3.** any claim exceeding the financial value of this Agreement.
- 12.3.** Neither Party shall have any liability in respect of the performance of this Agreement as a result of a Force Majeure event provided the affected Party promptly serves notice on the other Party detailing the Force Majeure event and the Force Majeure event does not exceed a period of three months.
- 12.4.** The Party claiming to be prevented, hindered or delayed in the performance of any of its obligations under this Agreement by reason of Force Majeure shall use reasonable commercial endeavours to mitigate the consequences and effects of the Force Majeure event.

13. Notices

- 13.1.** Any notices necessary or required this Agreement shall be served by hand or by way of recorded delivery mail or courier or electronic mail. Notices shall be deemed to have been delivered immediately if by hand, upon signing if by recorded delivery or courier, or 1 hour after sending an electronic mail if the electronic mail has not been returned undelivered.

14. Rights of third parties

- 14.1.** Unless expressly stated a person or company who is not party to the Agreement shall not have any rights, benefits or obligations under this Guarantee or any part of it, under the Contract (Rights of Third Parties) Act 1999 except where a claim is made under an insured risk in which case full rights of recourse and subrogation shall apply.



15. Waiver

- 15.1.** No forbearance, indulgence, relaxing, inaction or delay in either party enforcing performance, its contractual or legal rights shall prejudice, restrict or otherwise adversely affect the rights of that party to enforce its rights at a later date or later breach.

16. Severance

- 16.1.** If any provision of this agreement is, or shall become invalid or unenforceable in the opinion of a court of Law it shall in no way affect or diminish the remainder of the agreement and it shall remain valid and enforceable to the fullest extent permitted by Law. Both parties shall seek and agree an alternative provision that is valid and enforceable and reflects the intent of the original term.

17. Law and jurisdiction

- 17.1.** The validity, construction and performance of this agreement shall be governed by the Law of England and Wales.
- 17.2.** The Parties concede to the jurisdiction of the courts of England and Wales.

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