

Terms of Business

1 DEFINITIONS

1.1 Where used in this Agreement the following terms have the ascribed meaning:

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK, including the **Data Protection Act 2018**, the **UK GDPR**, and **General Data Protection Regulation (EU-GDPR)**;

"Commissioned" means the date on which:

- (a) both parties sign this Agreement (if applicable); or
- (b) The Factory sends to the Client the final Specification (which shall incorporate the terms of this Agreement);

"Data Controller" determines the purposes and means of processing personal data. (As set out in the UK GDPR);

"Data Processor" is responsible for processing personal data on behalf of a controller. (As set out in the UK GDPR);

"Fees" means the fees and expenses as set out in the Specification;

"Force Majeure" means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts;
- (h) non-performance by suppliers or subcontractors; and
- (i) interruption or failure of utility service;

"Information" has the meaning set out in the UK GDPR;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade

secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Personal Data**" is information that relates to an identified or identifiable individual. (As set out in the UK GDPR);

"**Privacy Policy**" means The Factory's privacy policy as set out in Appendix 2 to the extent it applies to the provision and receipt of the Services;

"**Processing**" has the meaning set out in the UK GDPR;

"**Services**" means the services as set out in the Specification;

"**Specification**" means the specification for the Services that is agreed in writing between the Client and The Factory as set out in Appendix 1; and

"**Works**" means any manuals, reports, studies, statistics, processes, designs, images or other materials that have been produced by The Factory during the duration of this Agreement.

"**Confidential Information**" means all information of a confidential nature (whether or not that information is marked or designated as confidential or proprietary), including (i) the Information and the Works (whether created, adapted or modified); (ii) information concerning business methods and practices, personnel, customers, donors, clients and suppliers (whether actual or prospective); (iii) information concerning inventions, processes, methods, products, patents, patent applications, intellectual property and other proprietary rights; (iv) specifications, drawings, models, samples, tools, computer programs, technical information, presentations and related materials; (v) all prepared notes, documents and materials which reflect, interpret, evaluate, include or are derived from confidential information; and (vi) all information which can be reasonably discerned as confidential.

- 1.2 Any clause headings in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 1.3 In this Agreement including the recitals, unless the context otherwise requires:
 - (a) references to Clauses and Appendices are to be construed as references to the clauses and appendices to this Agreement;
 - (b) references to any other document or any provision thereof shall be construed as references thereto as it is in force for the time being and as amended in accordance with the terms thereof;
 - (c) words importing the plural shall include the singular and *vice versa* and words importing the masculine gender shall include the feminine and *vice versa*;
 - (d) references to any statutes or statutory provisions include any statute or statutory provision which amends, extends, consolidates or replaces the same, or which has been amended, extended, consolidated or replaced by the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;

- (e) any reference in this Agreement to "**person**" or "**entity**" includes individuals, bodies corporate, incorporated associations and partnerships.

1.4 The Appendices form part of this Agreement.

2 SCOPE

- 2.1 This Agreement shall come into force on the date the project is Commissioned or the date on which the Client first sends Client Data to The Factory, whichever is sooner. This Agreement shall expire on completion of the project in accordance with the Specification unless, and to the extent terminated (in whole or in part), in accordance with this Agreement or otherwise agreed between the parties. *The specific non-exclusive licence to The Factory's Intellectual Property Rights (IPR) as stated in clause 7.3 (below) will continue perpetually.*
- 2.2 The Factory shall provide to the Client the Services in consideration of payment by the Client to The Factory of the Fees.
- 2.3 In the event of any inconsistency between the clauses of this Agreement and the Specification, the Specification shall prevail.
- 2.4 This Agreement shall prevail over any terms and conditions of the Client. No conduct by The Factory shall be deemed to constitute acceptance of any terms put forward by the Client.
- 2.5 The Factory shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and The Factory shall notify the Client in any such event.

3 FEES

- 3.1 The Fees will be payable by the Client to The Factory in respect of the Services at the rates set out in the Specification.
- 3.2 The Client shall pay the Fees (together with VAT or other applicable sales tax on such sums) to The Factory within 28 days of the date of invoice and time for payment shall be of the essence of the Agreement. The Factory may invoice one third of the fees immediately after the project has been Commissioned and thereafter may invoice each calendar month in respect of the Services carried out in that preceding month.
- 3.3 Without prejudice to any other remedy which The Factory may have, if any sums due under this Agreement are not received by The Factory in cleared funds by the due dates referred to in Clause 3.2 above The Factory may (in its sole discretion):
 - (a) charge interest on the overdue amount at the rate of 4% above the base rate of Lloyds TSB Plc for the time being from the due date until the overdue sums have been received by The Factory in cleared funds; and/or
 - (b) suspend the performance of the Services or obligations required under this Agreement until such time as payment of the overdue sums (together with any interest) have been received by The Factory in cleared funds.

- 3.4 All payments made by the Client under this Agreement shall be made without set-off or counterclaim of any description.

4 INFORMATION

4.1 The Client shall:

- (a) at all times ensure that it complies with Clause 6 of this Agreement and shall comply with all other applicable laws;
- (b) provide The Factory with all such assistance as is reasonably necessary to enable The Factory to perform its obligations under this Agreement and make full disclosure to The Factory of all information (which may include Personal Data) and material relevant to the performance and subject matter of the Services (the "**Information**");
- (c) ensure that any such Information and material is true, accurate and complete in all respects, is free from any defamatory or unlawful content and that it does not infringe any Intellectual Property Rights of any third party;
- (d) ensure that such information is provided within sufficient time to enable The Factory to provide the Services in accordance with this Agreement;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- (f) indemnify The Factory (and keep it indemnified) against all costs, claims, expenses and other liabilities arising out of or in connection with any breach by the Client of its obligations in this Clause 4.

4.2 The Factory will carry out its Data Processing obligations to the Client by ensuring all the requirements of the Data Protection Legislation are met including that of Article 28 (GDPR) in all its data processing activities. This means that not only will sufficient technical and organisational measures be in place to achieve this, but that the protection of the rights of the data subject are also met. Specifically:

- (a) Factory will not engage another processor without prior written authorisation of the Client
- (b) All processing shall be governed by a contract setting out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects and the obligations and rights of the Client. The Factory will:
 - (i) Only process the personal data as instructed by the Client and will not send data outside the Country without prior written consent
 - (ii) ensure that all The Factory researchers who are authorised to process personal data are fully trained and aware of their responsibilities including commitment to complete confidentiality
 - (iii) take all measures required pursuant to Article 32 with regards to the Security of Client Data.
 - (iv) assist with the Client's obligation to respond to requests by individual when exercising their data subject rights (e.g. SARS)
 - (v) electronically destroy all personal data at the end of the research process

- (vi) commit to allowing and facilitating audits and inspections by Clients at their request so as to demonstrate The Factory's compliancy with the Data Protection Legislation
- 4.3 The Factory will not use the Data or Information for any purpose other than authorised and required by the Client under this Agreement
- 4.4 Where The Factory is required to produce any material (in written or electronic format) as part of the Services it shall use its best endeavours to ensure the content is true and accurate to the best of its knowledge.

5 CONFIDENTIALITY

- 5.1 Each party acknowledges and accepts that it may receive information of a confidential nature relating to the other party, its business and clients. Each party undertakes to the other that it shall only use the confidential information solely for the purpose envisaged by this Agreement and shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by Clauses 5.2 and 5.3.
- 5.2 Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives, subcontractors or advisors who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisors to whom it discloses the other party's confidential information, complies with this Clause 5 and that of clause 6;
 - (b) with the consent in writing of the other party to this Agreement;
 - (c) where such confidential information is already in the public domain other than as a result of a breach of any obligation of confidentiality under this Agreement; and
 - (d) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 5.3 The Factory may name the Client in lists of clients that it produces and discloses from time to time.

6 DATA PROTECTION

- 6.1 Clauses 6.1 and 6.2 shall apply in so far as the Information referred to in Clause 4.2 contains Personal Data. The Client warrants that:
 - (a) the Personal Data is processed by the Client in compliance with all applicable laws and that receipt of the Services pursuant to this Agreement will not cause the Client to be in any breach of applicable law including the Data Protection Legislation;
 - (b) the Services will be entirely consistent with the purposes for which the Personal Data was collected;
 - (c) the Personal Data is accurate and the Client shall promptly provide The Factory with all amendments and corrections to Personal Data to enable The Factory to keep such Personal Data at all times fully up to date; and

- (d) the Services shall not involve the Client obtaining Personal Data where a data subject has previously indicated that it does not wish the Client to hold such data.
- 6.2 The Factory and the Client acknowledge that for the purpose of the Data Protection Legislation, the Client is the Data Controller and The Factory is the Data Processor in relation to the Information.
- 6.3 The Factory shall only process the Information in accordance with:
 - (a) the Client's instructions from time to time; and
 - (b) the terms of this Agreement.
- 6.4 This Clause 6.4 shall apply where The Factory provides details of individuals to the Client as part of the Services and those details contain Personal Data as collected by The Factory. The Client acknowledges and agrees that as part of the Services The Factory:
 - (a) have obtained Personal Data from publicly available sources in accordance with the Privacy Policy;
 - (b) uses its reasonable endeavours to ensure the Personal Data is true and accurate to the best of its knowledge; and
 - (c) have not obtained specific consents or authorisations from the individuals for the use of the details envisaged by the Client. On receipt of the details the Client will be a Data Controller for the purposes of the Data Protection Legislation and must comply with the provisions of the Data Protection Legislation, including the eight data protection principles.
- 6.5 The Client agrees to indemnify The Factory against all reasonable costs claims expenses and other liabilities arising out of or in connection with any breach of its obligations under this Agreement and The Factory agrees to indemnify the Client against all reasonable costs claims expenses and other liabilities arising out of or in connection with any breach of its obligations under this Agreement.

7 WORKS PRODUCED WHEN PERFORMING THE SERVICES

- 7.1 All Intellectual Property Rights vesting in The Factory prior to the date of Commission or developed or acquired by The Factory during the term of this Agreement shall remain vested in The Factory.
- 7.2 It is acknowledged that when performing the Services The Factory may create, adapt or modify the Works.
- 7.3 On payment of all the Fees (together with any interest due), The Factory shall grant to the Client a non-exclusive licence to The Factory's Intellectual Property Rights (IPR) used in the production of, and contained within, the body of the Works. The Client may use, adapt, copy and produce this element of the Works perpetually and solely for the Client's own specific purposes as set out in the Specification. The Client shall not sub-licence, assign or otherwise transfer the rights granted in the aforementioned licence, nor disclose The Factory's IPR in the Works to any other party, without prior written consent of The Factory. This clause does not relate to any personal data contained within the Works; which is in the control of the Client (as Data Controller) and processed by the Client and The Factory in accordance with the **Data Protection Legislation**.

8 WARRANTIES AND LIABILITY

- 8.1 Subject to Clause 8.2 The Factory warrants that it will perform the Services with reasonable care and skill.
- 8.2 The Factory will not be liable for any liability, in loss or damage arising from misuse of the “Works” by the Client. Any decision or action taken by the Client with the “Works” will be the responsibility of the Client and entirely at the Client’s risk. This does not relieve Factory of its legal responsibilities as a Data Processor in producing the “Works” and its compliance with the “Data Protection Legislation”.
- 8.3 The entire liability in contract, (including negligence or breach of statutory duty), of The Factory under, or in connection with, this Agreement shall in all circumstances be limited to £2,000,000 - *Which represents The Factory’s current limit of professional indemnity insurance cover.*
- 8.4 Nothing in this Agreement shall have the effect of limiting or excluding the liability of The Factory for death or personal injury caused by the negligence of The Factory, for fraud or otherwise as prohibited by law.
- 8.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

9 TERMINATION

- 9.1 Either party may terminate this Agreement at any time by giving not less than 30 days’ notice in writing to the other.
- 9.2 Either party may terminate this Agreement immediately by giving written notice to the other party if:
- (a) that party makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company or limited liability partnership) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or an encumbrancer takes possession, or a receiver is appointed, over any of its property or assets or anything analogous to any of the foregoing occurs to that party under the law of any jurisdiction; or
 - (b) that party commits any material breach of this Agreement and (if capable of remedy) fails to remedy the same within 30 days after being given written notice to do so.
- 9.3 If this Agreement is terminated in accordance with this Clause 9:
- (a) notwithstanding any provision in the Specification to the contrary, The Factory shall be entitled to invoice for all the Fees attributable to the Services and expenses incurred by The Factory to the date of termination at the rates set out in the Specification (insofar as such sums have not previously been invoiced) and all invoices shall become immediately due and payable;
 - (b) the provisions of Clause 3.3(a) shall apply to all sums due in accordance with Clause 9.3 (a);

- (c) within 30 days following the receipt in cleared funds of the sums referred to in this Clause 9.3 The Factory shall (at the cost of the Client) deliver any Works to the Client that are completed;
- (d) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- (e) The Factory shall securely delete all Information provided by the Client to The Factory.

10 FORCE MAJEURE

- 10.1 Provided it has complied with Clause 10.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (the "**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 10.2 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 1 month, the party not affected by the Force Majeure Event may terminate this agreement by giving written notice to the Affected Party.

11 NOTICES

- 11.1 Any notice or consent required or permitted under this Agreement shall be in writing and shall be sent by first class post, hand delivery or email. Unless otherwise notified in writing for the purpose of this Clause 11 the postal and email addresses of the parties are as set out on the up to date headed stationery used by each party.

12 GENERAL

- 12.1 This Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and the terms of this Agreement shall supersede any previous agreements.
- 12.2 Neither the Client, or The Factory, shall be entitled to assign or subcontract or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of the other party.
- 12.3 The provisions of Clauses 4.1(f), 5, 6, 7, 8, 12.5 and 12.7 shall survive the termination for any reason or expiry of this Agreement.

- 12.4 Except as otherwise set out in this Agreement, no variation to this Agreement shall be effective unless it is agreed in writing and signed by The Factory.
- 12.5 This Agreement shall be governed by and construed in accordance with English Law and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts, to which each of the parties irrevocably submits.
- 12.6 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 12.6 shall not affect the validity and enforceability of the rest of the Agreement.
- 12.7 No one other than a party to the Agreement shall have any right to enforce any of its terms.
- 12.8 Neither party to this Agreement shall pledge the credit of the other nor represent itself as being an agent, partner, employee or representative of the other and shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied on behalf of the other.
- 12.9 Nothing in this Agreement shall operate so as to constitute a partnership between the parties.
- 12.10 No waiver of any rights arising under this Agreement shall be effective unless in writing and signed by a duly authorised signatory of the person against whom the waiver is to be enforced. No failure or delay by either party to this Agreement in exercising any right, power or remedy under this Agreement (except as expressly provided herein) shall operate as a waiver of any such right, power or remedy.
- 12.11 Each party agrees at its own expense to execute such documents and generally do everything further that may be necessary to fulfil its obligations under and achieve the objectives of this Agreement.
- 12.12 This Agreement may be executed in one or more counterparts each of which shall be deemed to be an original but all of which together shall constitute one and the same agreement.