



# Terms and Conditions

## Supply of Services

May 2024

6 pages including cover

## 1. DEFINITIONS

- 1.1. 'Agreement' means this Service Agreement.
- 1.2. 'Daintta' means Daintta Ltd, 124 City Road, London, EC1V 2NX.
- 1.3. 'Proposal' means Daintta's proposal for Services (if any).
- 1.4. 'Customer' means the company purchasing the Services as named in the Proposal.
- 1.5. 'Services' means the services and any resulting documentation supplied by Daintta as detailed in the Proposal.
- 1.6. 'Deliverable' means any specified items (such as documentation or reports) that are to be produced in the course of provision of services and provided to the Customer for further use.
- 1.7. 'Purchase Order' means the Customers' purchase order provided to Daintta for the Services.
- 1.8. 'Effective Date' means the date of acceptance of the Purchase Order by Daintta and receipt of any advance payments requested as stated in the Proposal, whichever is the later.
- 1.9. 'Contract Period' means the duration of this Agreement which shall be in accordance with the Proposal.
- 1.10. 'Parties(s)' means the Customer and Daintta.

## 2. AGREEMENT

- 2.1. This Agreement shall come into existence upon the Effective Date.
- 2.2. This Agreement and the Proposal represents the entire agreement between the Parties and supersedes all previous conditions, understandings, commitments, agreements or representations (other than fraudulent misrepresentations) whatsoever whether oral or written relating to the provision of Services as outlined in the Proposal.
- 2.3. No amendment to this Agreement will be valid unless confirmed in writing and signed by an authorised signatory of both parties on or after the date of this Agreement.
- 2.4. In the event that any of the terms and conditions of this Agreement is judged to be in whole or in part illegal or unenforceable for any reason the remainder of these terms and conditions shall remain in force.
- 2.5. No delay or failure by either party in enforcing its respective rights will prejudice or restrict the rights of that party and no waiver of any such rights, or of any breach of any contractual terms, will be deemed to be a waiver of any other right or of any later breach.
- 2.6. Neither party will assign or transfer this Agreement without the prior written consent of the other party. This clause does not impact on Daintta's being entitled to use sub-contracted personnel in the performance of the Services.

## 3. THE SERVICES

- 3.1. Daintta shall supply the Services as specified in the Proposal in accordance with the terms and conditions of this Agreement.
- 3.2. Daintta shall exercise all reasonable skill and care in the performance of the Services. Daintta disclaims and excludes all other warranties whether express or implied in law to the fullest extent permitted by law.

#### **4. DOCUMENTS AND REPORTS**

- 4.1. As part of the Services provided, Daintta may be required to produce written documentation or reports.

#### **5. PRICE**

- 5.1. The fixed price and/or the Time and Materials price for the Services is as detailed in the Proposal. There shall be no variation to this price as a result of the actual costs incurred by Daintta except where Daintta incurs additional costs due to any failure of the Customer to perform their obligations, or a variation to the scope of supply or specification is agreed in writing between the parties.
- 5.2. All prices quoted by Daintta are exclusive of VAT and all other taxes and duties. All such taxes and duties which Daintta will have to pay or collect in connection with this Agreement will be promptly reimbursed by the Customer. In the event that travel and subsistence expenses will be incurred by Daintta in the provision of the Services, these will be outlined in the Proposal, and deemed to be accepted on acceptance of the proposal.

#### **6. PAYMENT**

- 6.1. The Customer agrees to pay the price in accordance with the payment arrangements stated in the Proposal.
- 6.2. Payment is to be submitted in pounds sterling to the following account.  
HSBC Bank, Sort Code: 40-03-04 Account Number: 52376857
- 6.3. With the exception of any payments which are due immediately upon receipt of the Purchase Order or prior to commencement of specific activities (as detailed in the Proposal), all payments are to be made within 30 days of the date of invoice.
- 6.4. All payments which are not received when payable will be considered overdue and remain payable by the Customer together with: (a) interest for late payment at the rate of five per cent (5%) per annum above The Bank of England base rate from the date payable until the date payment is received. Such interest is due for payment immediately on invoice; (b) all reasonable expenses incurred in obtaining payment from the Customer.
- 6.5. Notwithstanding the above provisions for late payment, in such event Daintta may, at its option and without prejudice to any other remedy at any time after payment has become overdue, terminate this Agreement.
- 6.6. If Daintta becomes entitled to terminate this Agreement for any reason, any sums then due to Daintta will immediately be payable in full.
- 6.7. In no case shall any dispute concerning any item or separate part of the work or any further contractual obligation of Daintta to the Customer affect the Customer's obligation in respect of payments for other parts if any part or instalment of the price is not paid when due, or work is held up for any reason attributable to the Customer, or the Customer incurs bankruptcy, insolvency, liquidation or the appointment of a Receiver, the full price of the Services less any sums already paid in respect of the Services and/or works done by Daintta shall immediately become due and payable by the Customer and Daintta may at its option cancel the Contract or cancel or suspend provision of the Services.

## **7. TIMESCALES**

- 7.1. Daintta shall use its reasonable endeavours to meet any milestone or delivery dates detailed in the Proposal. However it is acknowledged and agreed by the parties that Daintta shall not be liable for any loss or damage arising from any failure to meet such dates.
- 7.2. Daintta will promptly notify the Customer of any delays and the Customer and Daintta shall immediately meet to discuss and agree revised dates and timescales.
- 7.3. Time of delivery shall not be of the essence of the Contract.

## **8. CUSTOMER ITEMS AND PERSONNEL**

- 8.1. The Customer shall ensure the availability of suitably qualified Customer personnel at all reasonable times and locations as necessary to enable Daintta to perform the Services.
- 8.2. All items, documentation and information to be supplied by the Customer as set out in the Proposal shall be provided free of charge by the date outlined in the Proposal or agreed during subsequent discussions.

## **9. NOTICES**

- 9.1. Any notice to be given by either party to the other shall be in writing and may be sent by recorded delivery to the address of the other and shall be deemed to be served 2 days following the date of posting.

## **10. CONFLICTS OF INTEREST**

- 10.1. Daintta shall take appropriate steps to ensure that neither Daintta nor any employee, servant, agent, supplier or subcontractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the interests of Daintta or such persons and the duties owed to the Customer under the provisions of this Agreement or the Proposal. Daintta will disclose to the Customer full particulars of any such conflict of interest which may arise.
- 10.2. The provisions of this Condition shall apply during the continuance of this Agreement.

## **11. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 11.1. No person who is not a Party to this Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Customer or Daintta) shall have any right to enforce any term of this Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this Clause 11. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **12. HEALTH AND SAFETY**

- 12.1. The parties shall comply with all relevant health and safety regulations when on the other party's premises.
- 12.2. The Customer will advise Daintta of any health and safety information or advice which it receives during the performance of the Services.

### 13. INTELLECTUAL PROPERTY RIGHTS

- 13.1. In respect of the materials referred to in 8.2 above, the Customer hereby grants and warrants that it is able to grant Daintta a non-exclusive, royalty-free licence to use the Customer's or third parties pre-existing intellectual property rights necessary to enable Daintta to perform the Services. The Customer hereby indemnifies Daintta against any liabilities that may be incurred by Daintta due to a breach of this clause 13.1.
- 13.2. Daintta grants a non-exclusive, royalty-free licence to the Customer on payment of all fees to Daintta which relate to any Deliverable, including the use of any pre-existing intellectual property rights identified by Daintta.
- 13.3. Nothing shall prevent Daintta from using techniques, ideas, and other know-how gained during the performance of Services under this Agreement in the furtherance of its own business, to the extent that such does not result in disclosure or abuse of confidential information in breach hereof, or any infringement of any Intellectual Property Rights of the Customer.
- 13.4. Nothing in these terms and conditions shall affect the pre-existing proprietary rights or intellectual property rights of either party in the services or goods supplied.
- 13.5. Daintta will defend or settle any claim against the Customer that the normal provision of the Services delivered under the Proposal infringes a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the country of supply provided that the Customer: (a) makes no statement prejudicial to Daintta; (b) promptly notifies Daintta in writing; and (c) allows Daintta full control of the defence or settlement of any such claim.
- 13.6. Daintta has no obligation for any claim of infringement arising from: (a) Daintta's compliance with Customer's designs, specifications or instructions; (b) Daintta's use of technical information or technology provided by Customer; or (c) The Customer's commercial exploitation of the Services.
- 13.7. These terms state the Parties' entire liability for claims of intellectual property infringement.

### 14. NON-SOLICITATION

- 14.1. Both parties agree during the period of this Agreement and for 3 (three) months after its conclusion, not directly or indirectly to solicit for employment any of the staff of the other party at any time engaged directly in the pursuance of this Agreement without the prior written consent from that other party. Furthermore, should the soliciting party breach this condition, then the soliciting party expressly agrees to pay the other party as a recruitment fee a sum equal to 12 (twelve) months' gross salary offered by the new employer to the relevant member of staff.

### 15. CONFIDENTIAL INFORMATION

- 15.1. All written information and data made available by one party to the other under the terms of this Agreement is confidential and each party undertakes to treat such confidential information with the same care as it would reasonably treat its own confidential information.
- 15.2. Each party will use all reasonable endeavours to ensure that the other party's confidential information is not copied or disclosed to any third party whatsoever.
- 15.3. Upon expiration or termination of this Agreement each party will return to the other party all confidential information not previously returned.
- 15.4. These obligations of confidentiality will survive termination of this Agreement by ten (10) years.
- 15.5. Information shall not be considered as confidential where it is: (a) already in the public domain other than through default of the receiving party; (b) already in the receiving party's possession

with no obligation of confidentiality; (c) independently developed by the receiving party without reference to the confidential information.

- 15.6. Daintta is entitled to refer to work carried out under the Contract in publicity material. Any press release relating to work undertaken shall be submitted to the Customer for approval, which shall not unreasonably be withheld. Where any of Daintta's work is used by the Customer for publicity purposes, then such work shall be acknowledged as that of Daintta.

## **16. INDEMNITIES AND LIMITATIONS OF LIABILITY**

- 16.1. Each party indemnifies the other for direct physical injury or death to the extent that it is shown to have been caused by the negligence of that party or its employees in connection with the performance of this Agreement.
- 16.2. Daintta will indemnify the Customer for direct damage to property to the extent that it is shown to have been caused by the negligence of Daintta or its employees in connection with the performance of this Agreement. Daintta's total liability under this sub-clause will be limited to the contract value for any one event or series of connected events.
- 16.3. Any contractual liabilities of Daintta to the Customer under this Agreement including all related costs, fees and expenses will not under any circumstances cumulatively exceed the total prices paid and payable by the Customer under this Agreement.
- 16.4. Except as stated in this Agreement Daintta disclaims all liability to the Customer in connection with Daintta's performance under this Agreement and in no event will Daintta be liable to the Customer for any special, indirect or consequential damages including but not limited to loss of profits or arising from loss of data, loss of use or loss of opportunity.
- 16.5. The Customer will indemnify and defend Daintta and its employees in respect of any claims by third parties which are occasioned by or arise from any Daintta performance pursuant to the instruction of the Customer or its authorised representatives.

## **17. TERMINATION**

- 17.1. Either party will immediately become entitled to terminate this Agreement forthwith by notice to the other party if the other party; (a) commits any material breach of its obligations under this Agreement and, upon receiving notification from the other of such breach, fails to remedy the breach within thirty (30) days (if capable of remedy); or (b) is involved in any legal proceedings concerning its solvency, or commences liquidation (except for purposes of reconstruction) or ceases or threatens to cease trading, or if serious doubt arises as to its solvency.

## **18. FORCE MAJEURE**

- 18.1. If either party is obstructed in performing any of its obligations under this Agreement by an event outside its reasonable control, then performance to the extent obstructed is suspended for so long as the obstruction continues. Whilst performance is suspended and has been so for more than 14 days, either party may terminate the Agreement by immediate written notice. Daintta is entitled to charge the Customer for any work that has been undertaken until the suspension date.

## **19. JURISDICTION**

- 19.1. This Agreement will be governed in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.