

Terms and Conditions

1. Definitions

1.1 In these Terms and Conditions, except to the extent expressly provided otherwise:

"Business Day" means any weekday other than a bank or public holiday in England;

"Charges" means the amounts specified in Section 7 of the Statement of Work;

"Client" means the person or entity identified as such in Section 1 of the Statement of Work;

"Client Confidential Information" means:

(a) any information disclosed by or on behalf of the Client to Dukeberry [during the Term] OR [at any time before the termination of the Contract] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by Dukeberry (acting reasonably) to be confidential; and

(b) the terms of the Contract;

"Client Materials" means all works and materials supplied by or on behalf of the Client to Dukeberry for incorporation into the Deliverables or for some other use in connection with the Services;

"Client Personal Data" means any Personal Data that is processed by Dukeberry on behalf of the Client in relation to the Contract, but excluding *[personal data]* with respect to which Dukeberry is a data controller;

"Confidential Information" means Dukeberry Confidential Information and the Client Confidential Information;

"Consultant" means any consultant of Dukeberry Ltd;

"Consultant Confidential Information" means:

(a) any information disclosed by or on behalf of Dukeberry to the Client [during the Term] OR [at any time before the termination of the Contract] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as "confidential" or should have been understood by the Client (acting reasonably) to be confidential; and

(b) the terms of the Contract;

"Consultant Indemnity Event" has the meaning given to it in Clause 11;

"Contract" means a particular contract made under these Terms and Conditions between Dukeberry and the Client;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Client Personal Data, the General Data Protection Regulation (Regulation (EU) 2016/679);

"Deliverables" means those *[deliverables]* specified in Section 4 of the Statement of Work that Dukeberry has agreed to deliver to the Client under these Terms and Conditions;

"Dukeberry" means Dukeberry Ltd;

"Effective Date" means the date of execution of a Statement of Work incorporating these Terms and Conditions;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means, in respect of the Contract, the period specified in Section 2 of the Statement of Work;

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Services" means the consultancy services specified in Section 3 of the Statement of Work;

"Statement of Work" means a written statement of work agreed by or on behalf of each of the parties;

"Term" means the term of the Contract, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

"Terms and Conditions" means all the documentation containing the provisions of the Contract, namely the main body of these Terms and Conditions and the Statement of Work, including any amendments to that documentation from time to time; and

"Third Party Materials" means the works and/or materials comprised in the Deliverables (excluding the Client Materials), the Intellectual Property Rights in which are owned by a third party, and which are specified in Section 4 of the Statement of Work or which the parties agree in writing shall be incorporated into the Deliverables.

2. Term

- 2.1 The Contract shall come into force upon the Effective Date.
- 2.2 The Contract shall continue in force until the acceptance of the Deliverables in accordance with the Statement of Work, subject to termination in accordance with Clause 14.
- 2.3 Unless the parties expressly agree otherwise in writing, each Statement of Work shall create a distinct contract under these Terms and Conditions.

3. Services

- 3.1 Dukeberry shall provide the Services to the Client in accordance with these Terms and Conditions.
- 3.2 Dukeberry shall keep the Client informed about the progress of the Services and, in particular, shall promptly provide information about such progress following receipt of a written request from the Client to do so.
- 3.3 Dukeberry shall comply with all reasonable requests and directions of the Client in relation to the Services.
- 3.4 Dukeberry shall comply with all reasonable internal policies and procedures operated by the Client, communicated by the Client to Dukeberry and affecting the provision of the Services.

4. Client obligations

- 4.1 Promptly following receipt of a written request from Dukeberry to do so, the Client will provide to the Consultant such:
 - (a) assistance and co-operation;
 - (b) information and documentation; and
 - (c) access to the premises, computers and networks of the Client,

as is reasonably requested by Dukeberry for the purpose of enabling the Consultant to perform its obligations under these Terms and Conditions.

- 4.2 The Client shall be responsible for procuring any third party co-operation reasonably required by Dukeberry to enable the Consultant to perform its obligations under the Contract.

5. Deliverables

- 5.1 Dukeberry shall deliver the Deliverables to the Client.
- 5.2 The Client must promptly, following receipt of a written request from Dukeberry to do so, provide written feedback to Dukeberry concerning the Consultant's proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.
- 5.3 Dukeberry shall use reasonable endeavours to ensure that the Deliverables are delivered to the Client in accordance with the timetable set out in Section 5 of the Statement of Work.
- 5.4 Dukeberry warrants to the Client that:
- (a) the Deliverables will conform with the requirements of Section 4 of the Statement of Work as at the date of acceptance of the Deliverables; and
 - (b) the Deliverables will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

6. Intellectual Property Rights

- 6.1 Dukeberry hereby grants to the Client a non-exclusive, worldwide, perpetual and irrevocable licence to use the Deliverables (excluding the Third Party Materials and the Client Materials).

7. Charges

- 7.1 The Client shall pay the Charges to Dukeberry in accordance with these Terms and Conditions.
- 7.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Client to the Consultant.

8. Payments

- 8.1 Dukeberry shall issue invoices for the Charges to the Client on or after the invoicing dates set out in Section 7 of the Statement of Work.

- 8.2 The Client must pay the Charges to Dukeberry within the period of 30 days following the issue of an invoice in accordance with this Clause 8.
- 8.3 If the Client does not pay any amount properly due to Dukeberry under these Terms and Conditions, Dukeberry may:
- (a) charge the Client interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9. Confidentiality obligations

9.1 Dukeberry must:

- (a) keep the Client Confidential Information strictly confidential;
- (b) not disclose the Client Confidential Information to any person without the Client's prior written consent;
- (c) use the same degree of care to protect the confidentiality of the Client Confidential Information as Dukeberry uses to protect the Consultant's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) act in good faith at all times in relation to the Client Confidential Information.

9.2 The Client must:

- (a) keep Dukeberry Confidential Information strictly confidential;
- (b) not disclose Dukeberry Confidential Information to any person without the Consultant's prior written consent;
- (c) use the same degree of care to protect the confidentiality of Dukeberry Confidential Information as the Client uses to protect the Client's own confidential information of a similar nature, being at least a reasonable degree of care; and
- (d) act in good faith at all times in relation to Dukeberry Confidential Information.

9.3 No obligations are imposed by this Clause 9 with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality; or
- (b) is or becomes publicly known through no act or default of the other party.

9.4 The restrictions in this Clause 9 do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

9.5 Following the termination of the Contract, and within 5 Business Days following the date of receipt of a written request from the other party, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its computer systems.

9.6 Dukeberry and the client agree that the existence of the supplier-client relationship is not confidential or secret information.

9.7 The provisions of this Clause 9 shall continue in force indefinitely following the termination of the Contract.

10. Warranties

10.1 Dukeberry warrants to the Client that:

- (a) Dukeberry has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions;
- (b) Dukeberry will comply with all applicable legal and regulatory requirements applying to the exercise of the Consultant's rights and the fulfilment of the Consultant's obligations under these Terms and Conditions; and
- (c) Dukeberry has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

10.2 The Client warrants to Dukeberry that it has the legal right and authority to enter into the Contract and to perform its obligations under these Terms and Conditions.

10.3 All of the parties' warranties and representations in respect of the subject matter of the Contract are expressly set out in these Terms and Conditions and the applicable Statement of Work. Subject to Clause 12.1, no other warranties or representations will be implied into the Contract and no other warranties or representations relating to the subject matter of the Contract will be implied into any other contract.

11. Indemnities

11.1 Dukeberry shall indemnify and shall keep indemnified the Client against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Client and arising directly or indirectly as a result of any breach by the Consultant of these Terms and Conditions (a "**Consultant Indemnity Event**").

12. Limitations and exclusions of liability

12.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

12.2 The limitations and exclusions of liability set out in this Clause 12 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 12.1; and
- (b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

12.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

13. Force Majeure Event

13.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Contract (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

14. Termination

14.1 Either party may terminate the Contract by giving to the other party not less than 30 days' written notice of termination.

14.2 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party commits any breach of the Contract, and the breach is not remediable; or

- (b) the other party commits a breach of the Contract, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied.

14.3 Either party may terminate the Contract immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

15. Effects of termination

15.1 Upon the termination of the Contract, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 6, 8.2, 8.3, 9, 11, 12, 15, 16, 17, 18, 19, 20 and 21.

15.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Contract shall not affect the accrued rights of either party.

16. Non-solicitation of personnel

16.1 The Client must not, without the prior written consent of Dukeberry, either during the Term or within the period of 12 months following the end of the Term, engage, employ or solicit for engagement or employment any employee or subcontractor of Dukeberry who has been involved in any way in the negotiation or performance of the Contract.

17. No waivers

17.1 No breach of any provision of the Contract will be waived except with the express written consent of the party not in breach.

17.2 No waiver of any breach of any provision of the Contract shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Contract.

18. Severability

18.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

18.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

19. Variation

19.1 The Contract may not be varied except by means of a written document signed by or on behalf of each party.

20. Entire agreement

20.1 The main body of these Terms and Conditions and the Statement of Work shall constitute the entire agreement between the parties in relation to the subject matter of the Contract, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

20.2 The provisions of this Clause 20 are subject to Clause 12.1.

21. Law and jurisdiction

21.1 These Terms and Conditions shall be governed by and construed in accordance with English law.

21.2 Any disputes relating to the Contract shall be subject to the exclusive jurisdiction of the courts of England.

STATEMENT OF WORK

1. Client details

The Client is *[company name]*, a company incorporated in England and Wales (registration number *[registration number]*) having its registered office at *[address]*.

2. Minimum Term

[Specify Minimum Term]

3. Specification of Services

[Specify Services]

4. Specification of Deliverables

[Specify Deliverables]

5. Timetable

[Insert timetable]

6. Client Materials

[Specify Client Materials]

7. Financial provisions

[Insert financial provisions]

8. Contractual notices

[Consultant contractual notices address details]

[Client contractual notices address details]

By signing below the parties have indicated their acceptance of this Statement of Work together with the terms and conditions attached to this Statement of Work, providing that if there are no terms and conditions attached to this Statement of Work, the parties agree that this Statement of Work shall be governed by the terms and conditions most recently agreed by the parties in writing.

SIGNED BY *[individual name]* on, duly authorised for and on behalf of the Consultant:

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SIGNED BY *[individual name]* on, duly authorised for and on behalf of the Client:

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