

ANSEC IA Limited Terms & Conditions of Business



1 THE CONTRACT BETWEEN US

1.1 The whole of the contract between you (the “Client”, or “you”) and ANSEC IA Limited (or “we”) is described in the covering engagement letter, proposal and/or statement of work and any appendices and enclosures thereto other than these Terms of Business (“Engagement Letter”), and these Terms of Business, (together the “Contract”). Nothing we discussed prior to your signature of the Engagement Letter induced, nor forms part of, the Contract (including but not limited to any confidentiality agreements which, if any, you agree are terminated hereby) unless it is specifically set out in this Contract. No-one is authorised to agree any variations in the Terms of Business or the Contract unless any variations are documented and agreed in writing between us.

1.2 If we have already started work (e.g. by gathering information, project planning or giving initial advice) then you agree that this Contract applies retrospectively from the start of our work.

1.3 The definitions set out in these Terms of Business, the Engagement Letter and any appendices or enclosures shall have the same meaning throughout this Contract. If there is a conflict between these Terms of Business and the Engagement Letter, these Terms of Business govern.

1.4 If any provision of this Contract is determined to be illegal, void or unenforceable in whole or in part, such provision or the affected part shall be deemed not to form part of this Contract but all other provisions together with the remainder of the affected provision shall remain in full force and effect.

Contracting parties and assignment

1.6 This Contract is between you and ANSEC IA Limited. You agree that your relationship is solely with ANSEC IA Limited as the entity contracting with you to provide the Services. Notwithstanding the fact that certain Services under the Contract may be carried out by personnel provided to ANSEC IA Limited from other Parties through service or other agreements, you agree that none of the Parties (except ANSEC IA Limited) will have any liability to you and that you will not bring any claim or proceedings of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence) in any way in respect of or in connection with this Contract against any of the Parties (except ANSEC IA Limited) or any subcontractors that we may use to provide the Services. The foregoing exclusion does not apply to any liability, claim or proceeding founded on an allegation of fraud or other liability that cannot be excluded under Northern Ireland law.

1.7 This Contract does not make either of us an agent or legal representative of the other, nor does it create a partnership or joint venture.

1.8 Neither of us may assign or otherwise transfer the benefit of this Contract without the prior express written consent of the other, save that we may assign the benefit of this Contract to any successor to our business. Further, neither of us will directly nor indirectly agree to assign or transfer any claim against the other arising out of this Contract to any other person.

Third party rights

1.9 No person who is not a party to this Contract other than our subcontractors, if any, shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

1.10 This Contract can be varied without any third party’s consent.

2 OUR SERVICES AND RESPONSIBILITIES TO YOU

2.1 The scope of our services and any Deliverables to be provided under this Contract together with our responsibilities for them (together the “Services”) are as described in the Engagement Letter. We will use all reasonable efforts to supply the Services in accordance with any timetable referred to in the Engagement Letter or otherwise specified by the parties. However, unless both parties specifically agree otherwise in writing, all dates given by ANSEC IA Limited or specified by you for the supply of the Services are intended for planning and estimating purposes only and are not contractually binding.

Engagement Team

2.2 Whilst we will attempt to comply with your request for specific individuals, the appointment of all personnel to perform the Services and the nature and duration of their assignment shall be made as ANSEC IA Limited considers appropriate. We may at any time replace or reassign any personnel assigned by us to the Services; in such circumstances we will endeavour to give you reasonable notice.

2.3 You will be responsible for ensuring that your staff involved with this Contract have the appropriate skills and experience. If any of your staff fail to perform as required, you will provide additional or replacement staff as we may reasonably request.

Data Protection

2.4 In providing the Services to you or otherwise in connection with the Services, we may:

(i) need to collect, hold and use information (e.g. contact details) about identifiable individuals (“Data Subjects”). We may also use such information as part of our client account opening and general administration process (e.g. in order to carry out anti-money laundering, conflict and financial checks or debt recovery). Should your officers or employees enquire, please inform them that we may hold information relating to them for these purposes; and

(ii) occasionally contact a Data Subject with details of events/seminars we are holding, or we may send a Data Subject publications or newsletters, which we believe may be of interest to him or her. If a Data Subject does not wish to receive this information, please let us know by informing the partner responsible for the Services.

2.5 We reserve the right to monitor telephone calls and electronic communications for the purposes of ensuring compliance with our legal and regulatory obligations and internal policies.

2.6 In providing some of the Services to you we may be processing information about Data Subjects on your behalf and thus act as a “Data Processor” for the purposes of the Data Protection Act 1998. In these circumstances, we will (i) only process personal data in accordance with your lawful and reasonable instructions; and (ii) comply with security obligations equivalent to those imposed on you, as Data Controller, by the seventh principle of that Act.

3 YOUR RESPONSIBILITIES

3.1 You are responsible for determining that the scope of the Services is appropriate for your needs.

3.2 Our performance of the Services, the timetable, the level of our Charges and any fee estimates each depend on the accuracy and completeness of any assumptions set out in the Engagement Letter. Please tell us if you believe any of these assumptions are unrealistic for any reason.

3.3 You will give us all the information that is necessary for the performance of the Services. In this context, you agree we shall not be treated as being on notice of information given to us in the course of previous engagements and so all information that is relevant to the Services must be given directly to the engagement team even if the same information has been given to us previously in the course of a different contract or engagement. Please note that, other than as set out in the Engagement Letter, we will not audit or otherwise test or verify the information provided to us in the course of the Services. You agree that we shall be entitled to rely on all information provided to us and on your decisions and approvals in connection with our Services and to assume that all such information provided to us from whatever sources is true, complete and not misleading. We will not be responsible for the consequences of any information provided to us in the course of the Services not being complete, accurate or current.

3.4 Where needed to assist us in performing the Services, you will (i) take decisions and obtain management approvals promptly; (ii) give us full and prompt access to your people and premises and those of your affiliates and to your other advisors associated with the engagement, together with all necessary administrative support; (iii) obtain any approvals, licences and security clearances promptly (including any relating to third parties, our personnel and any subcontractors); and (iv) keep us promptly informed of any proposals or developments in your business relevant to the Services.

3.5 You agree that you remain solely responsible for managing all aspects of your business, for taking all decisions and operating all accounting, internal control or management information systems. This includes applying your independent business judgement to evaluate any advice or recommendations that we give you. You will be responsible for deciding whether our recommendations make sense in the context of your business, and whether you wish to rely on, implement or act on them, including the actions necessary to realise any expected benefits.

3.6 Where you are using third parties to provide information, materials or other assistance in support of the Services, or you are employing other suppliers whose work may affect our ability to deliver the Services, you will be responsible for the management of such persons and their performance, including the timeliness and quality of their input and work.

3.7 You will also be responsible for paying the Charges in accordance with this Contract.

Legal advice

3.8 Our Services may be conducted alongside your legal advisers, acting separately for you. To the extent they relate to our performance of the Services, we may need to review sections of draft agreements prepared by your legal advisers but we are not qualified to provide legal advice. Any agreement is the product of negotiation between its parties and you agree that it is your responsibility to obtain appropriate legal advice and to decide whether in all the circumstances you are prepared to accept any proposed agreement.

4 RESPONSIBILITIES TO EACH OTHER

Confidentiality

4.1 We each agree that where either of us is in possession of information about the other that is by its nature confidential or is designated as such by the other (whether in writing or orally), including this Contract (“Confidential Information”), we each undertake to (i) keep it confidential; (ii) use it only in connection with providing and receiving the Services; and (iii) not to disclose it to any other person without the other’s prior written consent. These undertakings will not apply to any information that otherwise becomes generally publicly available, was possessed prior to the commencement of the Services (or prior to being designated as Confidential Information) or is lawfully acquired from a third party who is under no obligation of confidence or information which is or has been independently developed by the recipient.

4.2 We each will be entitled to disclose Confidential Information to our legal advisors to protect our legitimate interests and to comply with any legal, professional or regulatory requirement. You agree to reimburse any costs we may incur in complying with any such disclosure requirement relating to any of our Services to you imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against us, provided that we notify you promptly and, where reasonably or legally possible, prior to disclosure.

4.3 You agree that we may share Confidential Information with any subcontractors we use to provide the Services (or more generally to support our office administration) on the understanding that they will treat the information as Confidential Information in accordance with the provisions of this Contract.

4.4 Unless you tell us otherwise, we may in the performance of the Services attend meetings to discuss your affairs with your other advisers and may do so openly, free from any obligation to you of confidentiality.

4.5 When offering our services to others we may disclose to them that we have acted for you unless you instruct us to the contrary.

4.6 Nothing in this Contract will prevent or restrict any ANSEC IA party from providing services to other clients (including services which are the same or similar to the Services) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing the Services subject to the obligations of confidentiality set out in clause 4.1 even if those other clients’ interests are in competition with your own. Equally, you agree that to the extent that we possess information obtained under an obligation of confidentiality to another client or other third party, we are not obliged to disclose it to you or make use of it for your benefit, however relevant it may be to the Services.

Conflicts of interest

4.7 It is our practice, in appropriate circumstances, to check for conflicts of interest before taking on engagements. Please notify us promptly of any potential conflict affecting this engagement of which you are, or become, aware.

4 RESPONSIBILITIES TO EACH OTHER (CONTINUED)

Electronic communications

4.8 We each agree that we may communicate with each other by e-mail (including the internet). You further acknowledge that in order for our personnel to operate effectively and efficiently from your premises they may require access to your networks, for example, to enable access to our applications and systems. We each recognise that the internet is inherently insecure and that data can become corrupted, communications are not always delivered promptly (or at all) and that other methods of communication may be appropriate. In addition, the internet is prone to viruses. Similar hazards apply where we access our systems via your networks. We each recognise these hazards and so each of us will be responsible for protecting our own systems and interests and neither of us will be responsible to the other on any basis (contract, tort or otherwise) for any loss, damage or omission in anyway arising from the use of e-mail or the internet as a form of communication or from our personnel connecting to or accessing your network.

Staff

4.9 We each agree not to offer employment to or solicit the other's personnel who within 6 months of such action has been involved directly in the Services or otherwise connected to this Contract (except where an individual responds directly to a general recruitment campaign) nor use the services of any such personnel (either independently or via a third party) for a period of 6 months from the date that the individual concerned ceases to be permanently involved with the Services.

5 DELIVERABLES

Drafts and oral discussions

5.1 In formulating our conclusions, we may discuss ideas with you orally or show you drafts of the Deliverables (as specified in the Engagement Letter) for your comment. We do this on the basis that you will not rely on any drafts or oral comments or advice unless their content is finalised and confirmed to you in writing in the final Deliverables. Accordingly, we will not be responsible if you choose to act, or refrain from acting, on the basis of any drafts or oral comments or advice. If you want to rely or act on oral comments, or advice, please let us know in order that we may deal with them in our final Deliverables. Furthermore, for your convenience, the Deliverables may be made available to you in draft or in electronic as well as hard copy format. Multiple copies and versions of documents may therefore exist in different media. In the case of any discrepancy, the signed hard copy of the final Deliverable is definitive.

5.2 Unless the Engagement Letter specifies other arrangements, you agree that each Deliverable will be deemed accepted by you (and our Services, or the relevant part of them, completed) when it is in its final form or when you first make use of the Deliverable, whichever first occurs.

Use of Deliverables

5.3 The Deliverables and any other advice we provide to you are for your exclusive use and must be used solely for the purpose described in the Engagement Letter. They must not be used for any other purpose, recited or referred to in any document, copied or made available (in whole or in part) to any other person without our prior written express consent. You acknowledge that were you to do so (and without limitation) this could expose us to a risk that a third party who otherwise would not have access to the Deliverable (and/or Confidential Information as defined in clause 4 above), might claim to have relied upon the Deliverable (and/or Confidential Information) to its detriment and might bring or threaten to bring an action, claim or proceedings against us.

5.4 Save as expressly provided by the Engagement Letter, no person other than you may rely on the Deliverables and/or information derived from them and we accept no responsibility to any other person to whom the Deliverables are shown or into whose hands they may come.

Post date events

5.5 We have no responsibility to update any Deliverable for events occurring after completion of this Contract (which, unless provided otherwise in the Engagement Letter, will be the date on which the final Deliverable is delivered or signed), nor to monitor its continuing relevance or suitability for your purposes.

Ownership and intellectual property

5.6 On payment of all of our Charges, you will acquire ownership of the Deliverables in their tangible form and the right to use them internally in your business. We will own and retain ownership of all intellectual and other proprietary rights of any kind in the Deliverables, our working papers (if any) and in all other reports, materials, documentation, software, system interfaces, templates, methodologies and processes and ideas and concepts and techniques that we may use or develop in connection with this Contract (other than materials provided to us by you in which you retain intellectual and other proprietary rights). Any papers retained by us on completion of the Contract (including documents legally belonging to you) may routinely be destroyed in accordance with our internal policies.

5.7 You and we agree that neither of us will use the other's name, trademarks, service marks, logos, trade names and/or branding without prior written consent.

6 LIABILITY PROVISIONS

6.1 We will perform the Services with reasonable skill and reasonable care.

6.2 Without prejudice to any defence which we may have, you agree that we will not be liable to you for any loss, liability, damage, cost, charge or expense of whatever nature and howsoever caused and including interest (together “Losses”) unless and then only to the extent that such Losses are finally determined to have resulted from our breach of contract or negligence, subject always to the following provisions:

6.2.1 We will not be liable for any Losses arising out of your use of our Deliverables or our advice for a purpose other than as set out in the Engagement Letter.

6.2.2 We will not be liable for Losses to the extent such Losses arise from the acts or omissions of any person other than ANSEC IA Limited or any subcontractor (including any ANSEC IA Limited Party) that we may use to provide the Services.

6.2.3 We will not be liable for Losses arising as a result of the provision of false, misleading or incomplete information or documentation by, or the withholding or concealment or misrepresentation of information or documentation, by any person other than the ANSEC IA Limited Parties unless and then only to the extent that detection of such defect in the information or documentation or such withholding, concealment or misrepresentation should reasonably have been expected because it was evident without further enquiry from the information or documentation provided to us and expressly required to be considered by us pursuant to the provision of the Services.

6.2.4 Any liability which we may have to you under or in connection with this Contract for Losses suffered by you shall (so far as permitted by law) be limited to such an amount as is finally determined to be just and equitable, having regard to the extent of responsibility for the Losses of us, you, (including your directors, officers, employees or agents), and any person other than us who is jointly or severally liable to you for all or part of the same Losses, provided always that ANSEC IA Limited’s liability to you shall not under any circumstances exceed in aggregate the amount set out hereunder. Any limitation or exclusion or restriction on the liability of any such other person under any jurisdiction, whether arising under statute or contract or resulting from death, bankruptcy or insolvency, or any settlement of such liability agreed with you, shall be ignored for the purposes of determining whether that other person is liable to you and the extent of responsibility of that other person to you.

6.2.5 Our total liability of whatever nature, whether in contract, tort (including, without limitation, negligence), under statute or otherwise to you and to all other persons who we both have agreed may have the benefit of and rely on our work on the terms hereof, (you and they each a “Beneficiary”), for any and all Losses arising from or in any way in connection with this Contract shall not exceed the amount specified in the Engagement Letter.

6.2.6 Where there is more than one Beneficiary of the Services, the limitation in this clause 6.2 on our total liability to all Beneficiaries shall be apportioned by them amongst them. No Beneficiary shall dispute or challenge the validity, operation or enforceability of this clause on the grounds that no such apportionment has been so agreed or on the ground that the agreed share of the limitation amount so apportioned to any Beneficiary is unreasonably low.

6.2.7 In no event shall we be liable to you, whether in contract, statute, tort (including, without limitation, negligence) or otherwise for (i) loss or damage incurred as a result of third party claims; (ii) loss of profit, goodwill, business opportunity or anticipated savings, loss of or corruption to data, loss of revenues or wasted management or staff time; or (iii) incidental, special, punitive, exemplary, indirect or consequential loss or damage; (together, “Excluded Losses”) which you may suffer, howsoever caused and whether or not you or we knew, or ought to have known, that the Excluded Losses would be likely to be suffered.

6.3 ANSEC IA Limited neither owes nor accepts any duty to any person other than you. No ANSEC IA Limited Party shall be liable for any Losses suffered by any other person caused by that or any other person’s use of or reliance on our Deliverables or our advice.

6.4 Nothing in this Contract shall exclude, restrict (or prevent a claim being brought in respect of) any liability arising from fraud or other liabilities which cannot lawfully be limited or excluded.

6.5 Unless and then only to the extent they have been finally and judicially determined (including the conclusion of any appeal) to have been caused by the fraud of any of the ANSEC IA Limited Parties, you agree to indemnify and hold harmless the ANSEC IA Limited Parties against all Losses which they incur in the defence and settlement (including meeting any judicially determined award of damages) of any demand, action, claim or proceeding (a “Claim”) brought by any third party in any way arising in connection with this Contract whether or not such Claim is founded upon an allegation of our negligence.

6.6 Any claim or action brought by you under or connection with this Contract must be brought within 24 months of the cause of action arising.

7 CHARGES

7.1 We will render invoices in respect of the Services comprising our fees, out-of-pocket expenses and any charges of specialists, subcontractors and advisers, plus applicable taxes including VAT (together our “Charges”). These will be in accordance with any schedules set out in the Engagement Letter. Our fees are generally calculated on the basis of the time and level of staff required to conduct the Services during normal office hours. Other factors may also be taken into account, including the use of our proprietary expertise, technology and know how, the need to act rapidly or exclusively or outside normal office hours or the importance, complexity or monetary value of the matter concerned. Out-of-pocket expenses will depend on the nature of the Services and where appropriate, staff travelling and subsistence will be reimbursable in accordance with our normal personnel policies.

7.2 Any estimate of the fees involved in the Services will be based upon our assessment of the work involved, taking account of any assumptions set out in the Engagement Letter. Unless we have agreed otherwise in the Engagement Letter, our fees may be adjusted if the Services prove more complex or time consuming than expected. We will let you know when we consider any estimate is likely to be exceeded.

7.3 A fee estimate assumes that we will have full and prompt access at all reasonable times to your premises, directors, staff and any advisers relevant to the Services. It also assumes that you will provide reasonable work space for our people without charge, as well as a suitable office environment and facilities including occasional secretarial support services, photocopying and computer facilities and access to telephone, fax and modem communications.

7.4 Unless otherwise specified in the Engagement Letter, we will invoice our Charges monthly in arrears and a final invoice on completion of the Services. These invoices are due for settlement within 14 days of receipt. You agree that we are entitled to charge you interest on overdue invoices at 2% over the prevailing Bank of England base rate.

7.5 We will be entitled to receive all charges incurred up to the date of termination of this Contract for any reason.

8 TERMINATION

8.1 We each may terminate this Contract without notice in the event that the other becomes the subject of insolvency proceedings or calls any meeting of its creditors. Alternatively, either of us may terminate this Contract at any time on 30 days' written notice to the other.

8.2 Should any action taken by you create a situation which amounts to a professional conflict of interest under the rules of the professional and/or regulatory bodies regulating the activities of the ANSEC IA Limited Parties, we may terminate this Contract without penalty on written notice. We will inform you as soon as reasonably practicable of any situation that occurs that we become aware of that may create a professional conflict which could result in termination in accordance with this clause 8.2.

8.3 Any provisions of the Contract which either expressly, or by their nature, extend beyond the expiry or termination of this Contract shall survive such expiration or termination.

9 GENERAL TERMS OF BUSINESS

Quality of Service

9.1 If, at any time, you believe our service to you could be improved, or if you are dissatisfied with any aspect of our services you should raise the matter with the partner responsible for providing the Services to you.

9.2 We will investigate all complaints.

Negotiation / mediation

9.3 We each agree that we will attempt in good faith to resolve any dispute or claim arising out of or in connection with the Contract promptly through negotiations between your senior executives and our management. If the matter is not resolved through negotiation then, prior to the commencement of legal proceedings, we will each attempt in good faith to resolve the dispute or claim by participating in an Alternative Dispute Resolution (ADR) procedure which, if not otherwise agreed, will be as recommended to us by the Centre for Effective Dispute Resolution. If the matter has not been resolved by an ADR procedure within 45 days of such procedure being commenced, then the matter may be dealt with through legal proceedings.

Legal and other obligations

9.4 Nothing in this Contract precludes us from taking such steps as are necessary in order to comply with any legal or regulatory requirement or any professional or ethical rules of any relevant professional body of which we or any of our partners or employees is, at the time, a member.

Force majeure

9.5 Neither of us will be liable for any delays or failures in performance or breach of contract due to events or circumstances beyond our reasonable control.

Governing law and jurisdiction

9.7 The Contract and our relationship is governed by and interpreted in accordance with Northern Ireland law. A claim may only be brought against us (in contract, tort or otherwise) if it can be brought in Northern Ireland law without reference to the law of any other country.

9.8 The Courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute (including claims for setoff and counterclaim) that may arise in connection with any aspect of the legal relationship established by the Contract or otherwise arising in connection with the Contract. We each submit irrevocably to the jurisdiction of the Courts of Northern Ireland.