

Terms of Business for Wellington Professional Services



THIS AGREEMENT is made

BETWEEN:

1. **WELLINGTON LIMITED (“Wellington”)** a company registered in England and Wales with registered number 04179398 and registered office at St Stephens House, Arthur Road, Windsor, Berkshire, SL4 1RY

AND:

2. **[INSERT CUSTOMER NAME] (“the Customer”)** a company registered in England and Wales with registered number [INSERT REGISTERED NUMBER] and registered office at [INSERT CUSTOMER'S ADDRESS]

each a “Party” and collectively “the Parties”.

WHEREAS:

- The Customer wishes to purchase the Goods and/or the Services to be sold thereunder.
- Wellington carries on the business of selling such Goods and/or Services.
- The Customer wishes to purchase certain Goods and/or Services from Wellington and, in so doing; the Parties have agreed to enter into this Agreement on the terms set out below.

IT IS AGREED:

1. Definitions and interpretation

In the Agreement:

“Agreement” means this consultancy agreement (including the Schedule of Engagement) and any amendments to it from time to time;

“AtomGoals” means Wellington’s organisational and team goals-management solution, licensable as part of the AtomSuite.

“AtomPPM” means Wellington’s project and portfolio management solution, licensable as part of the AtomSuite and configurable for use with Microsoft Planner Premium or Wellington’s Atom Scheduler.

“AtomSuite” means the collective Wellington software solutions comprising **AtomPPM**, **AtomGoals** and **AtomTime**, licensed to the Customer on an annually recurring basis.

“AtomTime” means Wellington’s time-tracking and utilisation solution, licensable as part of the AtomSuite.

“Atom Scheduler” means Wellington’s advanced scheduling engine available for use with AtomPPM as an alternative to Microsoft Planner Premium.

"Affiliate" means in relation to either party each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party or any other business entity from time to time controlling, controlled by, or under common control with, either party.

"Charges" means as specified in the Customer quotation, Proposal or SOW and as detailed in Schedule 1;

"Confidential Information" means all data or information belonging to the Disclosing Party (of whatever nature and whether written, oral or in electronic form) that the Receiving Party obtains, accesses or receives as a result of the discussions leading up to or the entering into, or in connection with the performance of the Agreement, and includes: (a) information concerning the commercial affairs, business, finances, infrastructure, products, services, developments, inventions, trade secrets, know-how, strategy, assets, operations, affairs, personnel, clients, customers, members, partners, or contracts of the Disclosing Party; (b) information that is designated as "confidential information" by the Disclosing Party at the time of disclosure; and (c) information that is clearly confidential from its nature and/or the circumstances in which it was imparted, or that would be regarded as being confidential by a reasonable business person.

"Controller" means an entity that determines the purposes and means of the processing of Personal Data.

"Customer" means existing and prospective customers of Wellingtone;

"Data Protection Legislation" means all applicable privacy and data protection laws including the General Data Protection Legislation ((EU) 2016/679) (GDPR) and any applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the UK Data Protection Act 2018, Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (Privacy Regulations) as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (SI 2011/1208), the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015 (SI 2015/355) and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2016 (SI 2016/524);

"Deliverables" means the deliverables specified in Schedule 1;

"Disclosing Party" means a party to the Agreement which discloses or makes available directly or indirectly Confidential Information;

"Goods" means the goods to be provided by Wellingtone pursuant to this agreement, as specified in Schedule 1;

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

"Personal Data" means any Customer Data relating to an identified or identifiable natural person to the extent that such information is protected as personal data under applicable Data Protection Law;

"Processor" means an entity that processes Personal Data on behalf of the Controller;

"Project" means the work detailed in Schedule 1 that is the subject of the Agreement;

"Services" means any product or service provided by Wellington to Customer pursuant to and as more particularly described in the Schedule 1;

"Support Contract" means the support and maintenance service agreement required to be held by the Customer in order to receive updates, fixes, service assistance, and operational support relating to the AtomSuite.

"Statement of Work ("SOW")" means a statement of work, Proposal or quotation agreed by the Parties, under which Wellington shall provide Goods and/or Services to the Customer pursuant to this Agreement.

2. Contract Boundary & Terminology

2.1. This contract explicitly relates to Services offering from Wellington and will take precedence over any previously agreed terms. The services being provided as part of this contract are defined in Schedule 1.

3. Charges

- 3.1. The Customer will pay the Charges to Wellington in accordance with the provisions of this Clause [3].
- 3.2. Wellington will invoice for work undertaken from time to time once the Project commences as outlined in Schedule 1 or at the end of each calendar month for work completed and expenses incurred.
- 3.3. The Customer will pay the Charges to Wellington within [30] days of the date of issue of an invoice issued in accordance with Clause [3.2]. Wellington retains the right to charge interest on late payment in accordance with the Late Payments Act, 1998. Wellington reserves the right to make an additional charge of 2% on invoices paid between 31 and 44 days and an additional charge of 4% on invoices paid between 45 and 90 days. Wellington reserves the right to charge 8% of the invoice value on any invoiced overdue more than 90 days.
- 3.4. All amounts stated in the Schedule(s) of Engagement or in relation to the Agreement are stated exclusive of all value-added taxes, which will be added to those amounts and payable by the Customer to Wellington.
- 3.5. The charge rate per day DOES NOT INCLUDE travel & accommodation costs relating to working at client site, which are payable in addition to the charges at the rates set out in schedule 1.
- 3.6. Any days quoted are an estimate based on known requirements. Services are provided on a time and materials (T&M) basis.
- 3.7. Any stated costs do not include Microsoft licensing.

4. Intellectual Property Rights

- 4.1. Wellington hereby grants to the Customer a non-exclusive licence under the Intellectual Property Rights in the Deliverables to copy, reproduce, distribute, adapt and edit the Deliverables for internal use throughout the organisation of the Customer. The Customer does not retain the right to distribute beyond those employed by the Customer, or sell, publish, or profit from the Intellectual Property Rights in the Deliverables.

5. Warranties

- 5.1. The Customer warrants [and represents] to Wellington that the Customer has full power to enter into the Agreement and to perform its obligations under the Agreement.

6. Confidentiality

- 6.1. The Receiving Party shall keep in strict confidence (and ensure that its professional and other advisers keep confidential) the other party's Confidential Information disclosed to it by or on behalf of the Disclosing Party or otherwise obtained by the Receiving Party. The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Agreement, and shall ensure that such employees, agents, or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party under the Agreement. The Receiving Party shall, having regard to the state of technological developments, implement and maintain all appropriate technological and organisational measures to protect such Confidential Information which shall include the following:
- 6.1.1. preventing unauthorised persons from gaining access to the Confidential Information;
 - 6.1.2. preventing its systems from being used without authorisation; and
 - 6.1.3. ensuring that Confidential Information cannot be accidentally or unlawfully read, copied, modified, or removed without authorisation during use, after storage, or during electronic transmission or transport.
- 6.2. The Receiving Party will use the Confidential Information solely in connection with the performance of its obligations or the exercise of its rights under the Agreement; and take all action reasonably necessary to secure the Disclosing Party's Confidential Information against theft, loss or unauthorised disclosure.
- 6.3. Clauses [6.1] and [6.2] shall not apply to the extent that: (a) such information was in the possession of a party, without obligation of confidentiality, prior to its disclosure; (b) such information was obtained from a third party without obligation of confidentiality; (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of the Agreement; (d) such information was independently developed without access to the Disclosing Party's Confidential Information; or (e) such information was required to be disclosed by law, regulation, the order of a regulatory authority or a court of competent jurisdiction.
- 6.4. This Clause [6] shall survive termination or expiry of the Agreement.

7. General

- 7.1. No breach of any provision of the Agreement will be waived except with the express written consent of the Party not in breach.
- 7.2. If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect.
- 7.3. Nothing in the Agreement will constitute a partnership or employment or agency relationship between the Parties.
- 7.4. The Agreement may not be varied except by a written document signed by or on behalf of each of the Parties.
- 7.5. Neither Party may without the prior written consent of the other Party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 7.6. The Agreement is made for the benefit of the Parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any

amendment, waiver, variation, or settlement under or relating to the Agreement are not subject to the consent of any third party.

- 7.7. The Agreement will constitute the entire agreement between the Parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements, and understandings between the parties in respect of that subject matter.
- 7.8. Neither Party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
- 7.9. Neither Party will have any liability other than pursuant to the express terms of the Agreement
- 7.10. The Agreement will be governed by and construed in accordance with English law, and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.

8. Assignment

- 8.1. Neither party may assign the rights and obligations, in whole or in part, under this Agreement without the prior written consent from the other party to any affiliate (such consent is not to be unreasonably withheld).

9. Restrictions

- 9.1. The Customer shall not for a period of twelve months following the termination of the Agreement recruit or attempt to directly recruit any Employee or Associate of Wellingtone, including permanent employees and contractors provided through Wellingtone.

10. Statement of Work (SOW)

- 10.1. This Agreement may have one or more Statement of Work. Wellingtone will send to the Customer written confirmation of the Project specifying the duration of the Project, the identity of the resources being provided by Wellingtone, the hourly or daily rate charged by Wellingtone together with such expenses as may have been agreed.
- 10.2. The Customer must provide a Purchase Order or similar formal authorisation for work to proceed for each submitted Schedule of Engagement.

11. Cancellation or Postponement

- 11.1. Wellingtone reserves the right to impose charges should the Customer cancel or postpone Services or not provide the appropriate hardware and software environment in a timely manner after dates of engagement have been agreed and confirmed by email. Charges for cancellation or postponement are:
 - More than 28 days prior to start date = No Charge
 - 28-7 calendar days prior to start date = 50% of fee relating to impacted days
 - Less than 7 working days prior to start date = 100% of fee relating to impacted days

12. Installation, Configuration Changes and 30 day Warranty Period

- 12.1. For Microsoft Solution deployment projects, Wellingtone will complete a Configuration Showcase, demonstration, or review (depending on the scale of the project and as agreed in the Proposal or SOW) once installation (if appropriate) and configuration is complete to demonstrate correct

functionality. Following initial training and at an agreed date, Wellington provides 30 days free access to the Wellington PPM Support Portal and PPM Support Service. This is the free 30-day warranty period.

- 12.2. Wellington warrants that, when delivered, and for a period of thirty (30) days thereafter (the "Warranty Period"), the solution configuration will conform in all material respects to the approved Configuration Requirements Document. The preceding warranty will not apply if: (a) any aspect of the solution is modified without Wellington's written consent, (b) the solution is not modified in accordance with defined best practice, (c) the warranty claim relates to an issue caused by modification of the solution by a third party other than Wellington, or (d) issues are caused by other software or hardware products.

13. Customer's Duties for Microsoft Solution Deployments

- 13.1. Customer will give Wellington full and free access to the environments included in the Project.
- 13.2. The Customer shall be responsible for procuring and assigning the necessary user license(s), at no cost, to enable Wellington to access and utilise the relevant systems required for service delivery. These licenses must include, but are not limited to, any Microsoft 365, Power Platform, or Project/Planner-related licenses necessary for the fulfilment of services under this agreement.
- 13.3. It is the Customer's responsibility to verify their own Microsoft licensing requirements and applicable pricing. Wellington shall not be held liable for any licensing shortfalls, misconfigurations, or associated costs incurred by the Customer in relation to their Microsoft environment.
- 13.4. Post Covid our colleagues tend to work from home. Our team is based across several countries within and outside of Europe & the USA. The customer is responsible for raising any specific security requirements regarding remote access or client hardware. Security requirements must be raised in the first Envisioning or Requirements Workshops. Any delay in raising security requirements may result in a delay in the deployment.
- 13.5. Customer will adhere to the usage rights associated with the software as per the Microsoft Software Licence Terms.

14. Software Licensing, Support & Product Usage Requirements

- 14.1. The AtomSuite, comprising AtomPPM, AtomGoals and AtomTime, is available on an annually recurring, per-user licensing basis, and the Customer must hold a valid licence for each AtomSuite application they choose to use, together with an active Support Contract.
- 14.2. Use of the AtomSuite requires appropriate Microsoft licensing, which may include Microsoft 365, Power Apps, Power BI and, for AtomPPM, either Microsoft Planner Premium or Wellington's Atom Scheduler. The Customer is responsible for procuring all required Microsoft licences, and Wellington accepts no liability for any delays, limitations or additional costs arising from licensing or support-contract shortfalls.

15. Limited Liability

- 15.1. The liability of Wellington to the Customer for damages of any kind under this Agreement will not exceed the total charges payable to Wellington for the Project defined by this Agreement. Wellington will not be liable for any loss of data or profits, or for any special, indirect, or consequential damages.

16. Data Protection

16.1. In this Agreement the Customer is the Controller and Wellingtone is the Processor.

16.2. In relation to the processing of Personal Data, Wellingtone shall:

- i) only process Personal Data in accordance with the Customer's written instructions from time to time, unless such
- ii) processing is required by any law to which Wellingtone is subject, in which case Wellingtone shall (to the extent permitted by law) inform the Customer of that legal requirement before carrying out the processing;
- iii) keep a written record of all such processing activities which shall include the information required to be kept under Article 30(2) of the GDPR.

16.3. In relation to the security and confidentiality of the Personal Data, Wellingtone shall:

- i) ensure that it has in place appropriate technical and organisational measures to ensure a level of security for the Personal Data which is appropriate to the risks to individuals that may result from the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data;
- ii) in addition to the confidentiality obligations in Clause [6] (Confidentiality): (i) ensure that only those of Wellingtone personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this Agreement and all of Wellingtone's personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, comply with the obligations set out in this Clause [14], and are bound by appropriate confidentiality obligations when accessing the Personal Data; and (ii) not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Customer;
- iii) not modify, amend, or alter the contents of the Personal Data unless specifically authorised in writing by the Customer.

16.4. If Wellingtone becomes aware of a Personal Data breach, it shall notify the Customer without undue delay on becoming aware of such a breach.

16.5. Wellingtone shall notify the Customer within five business days upon receiving the following:

- i) a request from a Data Subject to have access to that person's Personal Data; or
- ii) a complaint or request relating to the Customer's obligations under the Data Protection Legislation; or
- iii) any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement.

16.6. Wellingtone shall provide the Customer with full co-operation and assistance in order to enable the Customer to comply with its obligations under the Data Protection Legislation in relation to:

- i) the Customer's obligations in relation to responding to Data Subject requests, including (but not limited to) the following: (i) complying with the relevant timescales as set out in the Data Protection Legislation but strictly in accordance with the Customer's instructions; (ii) providing the Customer with any Personal Data that it holds in relation to the Data Subject making the complaint or request within the timescales are required by the Customer; and (iii) providing the Customer with any other information as so requested by the Customer in this regard;
- ii) the security of the Personal Data;
- iii) notifying Personal Data breaches to the relevant supervisory authority;
- iv) communicating personal data breaches to the Data Subject; and
- v) impact assessments and related consultations with supervisory authorities or regulators.

16.7. Wellington shall:

- i) make available to the Customer all information that the Customer requests from time to time to enable the Customer to verify that Wellington is in compliance with its obligations in this Clause; and
- ii) permit the Customer or its external advisers to inspect and audit Wellington's data processing activities.

16.8. Wellington shall not transfer any Personal Data to areas outside the European Economic Area (EEA) without the Customer's prior written consent.

16.9. Wellington shall, at all times during and after the term of this Agreement, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of Wellington's obligations under this Clause except and to the extent that such liabilities have resulted directly from the Customer's instructions.

16.10. Wellington shall, from time to time send the known Customer personnel useful PPM insights and marketing information. Once subscribed the Customer personnel will receive a welcome email confirming subscription and the opportunity to opt out of receiving non-transactional communications from Wellington within each communication.

17. Conflicts of interest

17.1. Wellington agrees to exercise good business judgment in avoiding any conflict of interest with respect to the work being performed for Customer. In any case, where Wellington believes a potential for a conflict of interest may exist, Wellington and Customer shall disclose and discuss the matter within a reasonable timeframe.

This agreement is executed & authorised by the Customer and Wellington:

The Customer	Wellington Limited
Authorised Signature	Authorised Signature
Print Name	Print Name
Job Title	Job Title
Date	Date

SCHEDULE 1

The products and services included in the scope of this Agreement are:

The costs including any reasonable travel and accommodation expenses relating to the delivery of this scope are :

The agreed payment milestones relating to undertaking this scope of work are:

Wellington will invoice for work completed and expenses incurred at the end of each calendar month or once the agreed work is complete, whichever is sooner.