

Schedule 1 Terms and Conditions

This is the Schedule mentioned in the proposal document or quote ("Statement of Work") from Differentia Consulting Ltd. ("Differentia") to you, ("the Client") regarding the provision of consulting services ("Services") by Differentia of which this Schedule forms part. ("the Engagement"). References to "the Director" shall include references to any officer of the Client as the Client may nominate with Differentia's agreement.

1. The Statement of Work shall set out the Services to be delivered by Differentia and associated matters. These Terms of Business shall be subject to variation if required in the Statement of Work.
2. The Services shall be delivered with that degree of skill and care which would reasonably be expected from persons skilled and experienced engaged in such activities under the sale of similar circumstances. Differentia shall not be liable for the consequences of any action taken by the Client that is contrary to the advice supplied by Differentia as part of the Services.
3. Where individuals to be involved in delivering the Services are named in the Statement of Work, Differentia shall use reasonable endeavours to ensure that they are so involved. Differentia may substitute those identified for others of equal or similar skills but we shall consult you before doing so.
4. The Client shall retain responsibility and accountability for
 - the management, conduct and operation of the Client's business and affairs
 - the use of or any implementation of advice or recommendations supplied by Differentia, its Consultants or other product of the Services
 - making any decision affecting the Services, any product of the Services, the Client's interests or affairs
 - the delivery, achievement or realisation of any benefits directly or indirectly related to the Services.
5. The Client will not require the Consultants to perform any acts which might cause the Consultants to be presented to third parties as having authority to bind the Client or make commitments on its behalf. The Client will in particular not involve the Consultants in any commitments to capital expenditure on behalf of the Client, nor the signing of any contracts or cheques on behalf of the Client nor will the Consultants be required to exert financial (or any other) control over the Client or any aspects of the Client's affairs.
6. The Client will ensure that work performed by or required of any of the Consultants, including attendance at meetings internally or with third parties, will not cause the Consultant to become a de facto director or employee of the Client or of any companies in the Client's group (if any) for statutory or other purposes. Any advice given by the Consultant to the Client will at all times be given by the Consultant solely in a professional capacity as an independent contractor and not as a de facto director or employee or other officer of the Client or of any companies in the Client's group (if any).
7. The Client shall not have the right, nor shall it seek to exercise direction, control or supervision over the Consultant as a de facto employee. The Consultant shall co-operate with any reasonable request of the Client within the scope of the services, but it is acknowledged that the Consultant will be able to determine how best the services are provided
8. Neither Differentia nor the Client excludes or limits its liability to the other party for death or personal injury resulting from its negligence or the negligence of any party employed by it in the provision of the Services
9. Subject to Clause 8, neither Differentia nor the Client shall be liable to the other for:
 - 9.1 loss of profits, business revenue, goodwill or anticipated savings; and/or
 - 9.2 any indirect or consequential loss or damage.
10. Subject to Clauses 2, 8 and 9, the liability of Differentia and the Client, whether arising from negligence, dishonesty, negligent misrepresentation, breach of contract, infringement of Intellectual Property or otherwise, shall not exceed the aggregate amount of fees charged in any one Calendar Year.

- 11 In the event that work performed by the Consultants includes any involvement in the preparation, consideration or review of the Client's management, statutory or other accounts, the Client will retain responsibility for them and their preparation as a consequence of or arising from work performed by the Consultant during the Engagement.
- 12 Differentia shall keep confidential the terms of this Engagement and any and all of the Client's information (in whatever format) that it or its Consultants may encounter or acquire as a result of this Engagement and it will not use the Client's information for any purpose other than to perform its obligations under this engagement. These confidentiality obligations shall not apply to information which is publicly available or becomes publicly available, other than through an act or omission of Differentia or its Consultants, or which Differentia is required to disclose by order of a court of competent jurisdiction, or where Differentia wishes to disclose to our professional indemnity insurers or advisors.
- 13 The Client shall provide secure access to its systems and data necessary for the delivery of the Services, in accordance with the Client's own information security policies and practices. All development work will be carried out by Differentia and its consultants on the Client's systems. No Client data will be taken off-site, unless specifically authorised by the Client for test purposes and suitably redacted so that it does not contain any commercially sensitive or personal data. For avoidance of doubt the Client shall not include any business sensitive and/or personal information in any data provided.
- 14 Differentia will
- 14.1 not access or attempt to access any information, data or materials contained on the Client's systems other than those necessary for the performance of its obligations to the Client
- 14.2 restrict such access to those Consultants who have been given access by the Client
- 14.3 agree acceptable methods of connectivity with the Client's systems on an individual project basis, using a method approved by the Client
- 15 In delivering Services under this Engagement, Differentia may execute developments using third party software licensed by the Client. Differentia will claim no title, rights of ownership, copyright or other intellectual property rights in any such developments. The intellectual property rights in any such Product of the Services will be vested in the Client as legal and beneficial owner. Differentia shall retain ownership of the copyright and all other intellectual property rights in the Services, whether oral or tangible, in our Templates and Scriptbuilder and in the ownership of our working papers. For the purposes of delivering Services to the Client, Differentia and its Consultants shall be entitled to use or develop knowledge, experience and skills of general application gained through performing the Services. Any property belonging to Differentia which might at any time be in the possession, custody or control of the Client will be returned to Differentia on demand and in any event on termination of this Engagement unless otherwise agreed in writing.
- 16 Any product of the Services released to the Client in any form or medium shall be supplied by Differentia on the basis that it is for the Client's benefit and information only and that it shall not be copied, referred to or disclosed, in whole (save for your own internal purposes) or in part, without Differentia's prior written consent.. The Client may disclose in whole any product of the Services to your legal and other professional advisers for the purposes of your seeking advice in relation to the Services, provided that when doing so you inform them that
- disclosure by them (save for their own internal purposes) is not permitted without Differentia's prior written consent, and
 - Differentia accepts no responsibility or liability to them in connection with the Services
- 17 Either Differentia or the Client may terminate this Engagement or the appointment of an individual Consultant at any time on written notice to the other, subject to one month's written notice on either side, save as may be specified in the document accompanying this Schedule. In the event of termination of an individual Consultant, with your agreement, Differentia will seek to provide a suitable replacement of equal or similar skill and experience within a reasonable timeframe before the end of the notice period.
- 18 Either Differentia or the Client may terminate this Engagement forthwith on giving notice to the other if:
- 18.1 the other commits any material or persistent breach of any term of this Engagement and (in the case of a breach capable of being remedied) fails within 30 days after the receipt of a request in writing to so do, to remedy the breach.

18.2 the other party has a receiver or administrative receiver appointed of it or over any of its undertakings or assets or passes a resolution for winding up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other party enters into any voluntary arrangement with its creditors or becomes subject to an administration order.

- 19 Any notice to either of Differentia or the Client delivered under the terms of this Engagement must be in writing
- 20 Neither Differentia nor the Client will, directly or indirectly, solicit the employment, either as a permanent employee or contractor, of either party's Consultants or employees during the Engagement or for a period of twelve months following completion or termination of the Engagement, without the prior written consent of the relevant party.
- 21 Both Differentia and the Client do not intend that any terms of this Engagement should be enforceable by any person who is not a party to it in accordance with the Contract (Rights of Third Parties) Act 1999.
- 22 These terms of business in Schedule 1 and the Statement of Work herein constitute the Engagement between Differentia and the Client and replaces any previous discussion, negotiations, understandings or agreements in relation to its subject matter and each party acknowledges that in entering into this Engagement it is not relying on any representation, condition or term not expressly set out herein.
- 23 The terms of this Engagement may only be varied in writing signed by the authorised representatives of both parties.
- 24 No delay or failure in exercising any right under this Engagement shall constitute a waiver of that or any other rights under this Engagement.
- 25 Nothing in these terms of this Engagement shall constitute a partnership, agency, joint venture or employment relationship between the parties. The Client is under no obligation to offer further contracts or services to Differentia nor is Differentia under any obligation to accept any contract or services offered. For the avoidance of doubt, both Differentia and the Client agree and intend that this agreement does not create any mutuality of obligation, either during or following the agreement.
- 26 If any term of this Engagement is found to be invalid or unenforceable, that invalidity or unenforceability shall not affect the remainder of the terms.
- 27 Neither party shall be liable for any failure or delay in their performance under this Engagement which is caused by circumstances beyond the reasonable control of a party including without limitation any labour disputes between a party and its employees and the acts or omissions of suppliers of the parties.
- 28 Data Protection.

The Client shall take all reasonable measures to ensure that no access is provided to Differentia or any of its Consultants to any commercially sensitive or Personal Data. Depending on the nature of the Services provided as defined in the Statement of Work, it may be deemed that the Client is the data controller and that Differentia is the data processor in respect of the Personal Data. In these circumstances, the following terms will apply.

28.1 In this Clause 28, the following words shall have the meaning set out below:

28.1.1 **"data controller", "data processor", "data subject", "personal data" and "processing"** shall have the meanings ascribed to them in the Data Protection Legislation;

28.1.2 **"Data Protection Legislation"** means the Data Protection Act 1998 and any other applicable law or regulation relating to the processing of personal data and to privacy, as such legislation shall be amended, revised or replaced from time to time, including by operation of the General Data Protection Regulation (EU) 2016/679; and

28.1.3 **"Personal Data"** means all personal data processed by Differentia on behalf of the Client for the purpose of supplying the Services.

28.2 It is acknowledged that the Personal Data:

28.2.1 relates to data subjects whose personal data is held on the Client's systems;

28.2.2 comprises personal identification and address details; communication means and contact details; employment-related details; financial and bank data of such data subjects; and

28.2.3 shall be processed by Differentia in order to supply the Services and only for the duration of this Engagement Contract or for such further time as the parties agree in writing.

28.3 Differentia agrees that it shall:

28.3.1 carry out processing only in accordance with the Client's written instructions from time to time, including as set out in this Statement of Work, unless required to do otherwise by law in which case, where legally permitted, Differentia shall inform the Client of such legal requirement before processing;

28.3.2 ensure that any Differentia Consultant authorised to process the Personal Data shall be subject to a binding duty of confidentiality in respect of such data;

28.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and accidental destruction, damage or loss, so as to allow the Client to comply with its obligations under the Data Protection Legislation;

28.3.4 provide such information and such assistance to the Client as the Client may reasonably require to allow the Client to comply with its obligations under the Data Protection Legislation,

28.3.5 on expiry or termination of this Engagement Contract, at the choice of the Client, either promptly and securely return the Personal Data to the Client or (unless its continued storage by Differentia is required by law) promptly and securely delete the Personal Data;

28.4 Differentia shall notify the Client after becoming aware of any accidental, unauthorised or unlawful destruction, loss, alteration, or unauthorised disclosure of, or access to the Personal Data.

28.5 Differentia shall notify the Client if it receives from any data subject whose personal data forms part of the Personal Data:

28.5.1 any communication seeking to exercise rights conferred on the data subject by the Data Protection Legislation; or

28.5.2 any complaint or any claim for compensation arising from or relating to the processing of the Personal Data.

29 This Schedule and the document to which it refers will be subject to and governed by English law and the English courts will have exclusive jurisdiction to determine or resolve any disputes arising from either of the Schedule or the document, their interpretation or subject matter.