

BPM-Discipline UK Ltd. (bpmd) Terms & Conditions

1 PROJECT OVERVIEW

- 1.1 These Business Terms shall apply to each Project to be carried out by BPMD for the Client. Details of the Project, including but not limited to duration, scope and service levels are set out in the Arrangement Letter.
- 1.2 BPMD and the Client acknowledge that the success of the Project is the joint responsibility of both parties.
- 1.3 BPMD and the Client recognise they must both use reasonable endeavours to meet the target dates agreed in the Arrangement Letter.

2 PAYMENT AND TAXES

- 2.1 Fees and expenses (the “Charges”) for the Project shall be calculated by BPMD on the basis of the Arrangement Letter.
- 2.2 BPMD is entitled to invoice the Client for any services it provides to the Client outside the scope of services set out in the Arrangement Letter.
- 2.3 BPMD shall invoice the Client for the Charges monthly in arrears or as otherwise specified in the Arrangement Letter.
- 2.4 The Client shall pay each invoice submitted by BPMD within 30 days of the date of the invoice.
- 2.5 The Client shall pay all amounts due without deduction, set off or counter claim.
- 2.6 Without prejudice to any other right or remedy of BPMD, if the Client fails to pay all or part of any invoice issued by BPMD, BPMD shall be entitled to charge interest on the outstanding sum on a daily basis from the original due date for payment until the outstanding sum has been paid in full. Interest will be calculated at a daily compound rate of 3% above the base rate then prevailing at Barclays Bank plc. In the event of any bona fide dispute with regard to an invoice, the undisputed portion shall be paid as set out above. Upon resolution of the disputed portion, any amounts owed to BPMD shall be paid with interest at the rate set forth above accruing from the date such amounts were originally due.
- 2.7 The Client shall pay all taxes due in connection with the Project and the Charges including, but not limited to, any applicable VAT or similar taxes or charges. Should any of the Charges be subject to withholding tax by any government, the Client shall reimburse BPMD for such withholding tax.
- 2.8 If the Client requests that BPMD personnel (“Personnel”) perform services outside the city, state, province, or country in which such Personnel are based, the Client shall reimburse BPMD for increased tax costs incurred by such BPMD personnel and/or BPMD as a result of providing such services. These costs include, but are not limited to (i) additional income taxes, (ii) social taxes, (iii) employment taxes, (iv) housing, (v) cost of living adjustments, (vi) other assignment related costs, and (vii) professional fees incurred for additional home country income tax compliance and foreign tax return preparation.
- 2.9 The Client agrees to reimburse and hold BPMD harmless from any deficiency (including penalties and interest) relating to taxes that are the responsibility of the Client under Clauses 2.7 and 2.8. Each party shall be responsible for taxes based on its own net income, employment taxes of its own employees, and for taxes on any property it owns or leases.

3 CONFIDENTIALITY

3.1 The Arrangement Letter and Business Terms are the confidential information of BPMD. The Client agrees that it shall only use this information for the purposes of the Project and it shall not disclose all or any part of these Business Terms or the Arrangement Letter to any other person or organisation without the prior written consent of BPMD.

3.2 The Client and BPMD each agree to keep confidential and not to disclose to any third party any information (excluding information which is or becomes public knowledge other than as a result of the default of the recipient) relating to the business or trade secrets of the other party ("Confidential Information"), or to make use of any such Confidential Information for any purpose other than in connection with the Project or as required by law, court order or regulation.

4 LIABILITY AND INSURANCE

4.1 For the duration of the Project, BPMD shall maintain in force the following insurances to cover the liabilities that may arise under or in connection with the Project:

Public liability - £1 million

Professional indemnity - £1 million

4.2 In the event of any failure or shortcoming (by BPMD) in the provision of the Project, the Client agrees to (i) promptly report such failure or shortcoming; and (ii) give BPMD a reasonable opportunity to remedy such failure or shortcoming, including, without limitation, any failure to achieve specified service levels. On receipt of such notification, BPMD shall make reasonable efforts to rectify the failure or shortcoming as soon as bpm practicable. The Client agrees that it shall provide such cooperation or support as is reasonably required by BPMD in order to remedy such failure or shortcoming.

4.3 Notwithstanding any other provisions in this clause 4, nothing in these Business Terms shall limit or exclude BPMD' liability for (i) death or personal injury which is caused by the negligence of BPMD; or (ii) fraud or fraudulent misrepresentation.

4.4 Subject to clause 4.6 below, BPMD shall only be liable to the Client for loss or damage to the Client's tangible property where such damage or loss is caused by the negligence of BPMD. BPMD' liability for such loss or damage to the Client's tangible property shall be limited to a maximum amount of £250,000 in respect of each incident or series of connected incidents and limited further to an aggregate amount of £1,000,000 in respect of all claims falling within the scope of this clause 4.4.

4.5 In respect of any liability which is not within the scope of clauses 4.3 or 4.4, BPMD' total liability under or in connection with the Project and/or the Arrangement Letter and/or the Business Terms however arising shall not exceed in aggregate the total Charges (excluding expenses) received by BPMD in respect of the Project.

4.6 BPMD shall have no liability however arising out of or in connection with these Business Terms, the Arrangement Letter or the Project for any:

4.6.1 direct loss or indirect loss of or damage or corruption to: (a) production; (b) software; (c) data; (d) profits; (e) contracts; (f) business; (g) revenues; (h) operation time; (i) goodwill; (j) reputation; or

4.6.2 indirect or consequential loss or damage; or

4.6.3 claim arising out of a claim against the Client by a third party.

4.7 BPMD and the Client agree that each of the sub clauses in clause 4.6 and each of the sub paragraphs in (a) – (j) in sub clause 4.6.1 constitute separate terms and the introductory wording of clause 4.6 shall be applied to each of them separately.

4.8 The term “however arising” when used or referred to in clauses 4.5 and 4.6 covers all causes and actions giving rise to the liability of the BPMD arising out of or in connection with these Business Terms and/or the Arrangement Letter and/or the Project whether arising by reason of any misrepresentation (whether made prior to and/or in the Arrangement Letter) negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise or whether caused by any total or partial failure or delay to perform the Project.

4.9 BPMD will not be liable for any loss, damage, cost or expense whatsoever and howsoever caused arising from any fraudulent or unauthorised act or statement, misrepresentation or default on the part of the Client, its directors, employees, agents and other contractors.

4.10 Except as set out in these Business Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Business Terms.

4.11 Any action by either party against the other relating to or arising out of the Project and/or Arrangement Letter and/or Business Terms must be brought within two (2) years after the aggrieved party became aware of (or should reasonably have become aware of) the cause of action, failing which the alleged wrongdoer shall be discharged of any liability with respect to such claim.

4.12 The allocations of liability in these Business Terms represents the agreed and negotiated understanding of the parties and BPMD' charges for services reflect such allocations.

4.13 This paragraph 4 survives the termination of the Project for any reason.

5 INDEMNITIES

5.1 BPMD will defend, at its expense, any third party claim that any deliverable provided as part of the Project infringes a UK copyright provided that the Client (a) allows BPMD conduct of the defence of such claim, including any settlement, (b) makes no prejudicial admission or statement, (c) notifies BPMD promptly of any claim and (d) actively co-operates and assists BPMD, at its expense, in the defence of the claim. In the event that any damages are finally awarded against the Client in respect of such a claim or agreed by BPMD in final settlement, these will be paid by BPMD. This indemnity will not apply if the infringement is the result of (a) the Client modifying or misusing the relevant deliverable or providing such deliverable to a third party, or (b) the failure of the Client to use enhancements or modifications offered by BPMD to avoid infringement, or (c) the use of information, documents, facilities or items supplied by the Client for the purposes of the Project. This indemnity constitutes the Client's sole and exclusive remedy and BPMD' entire liability with respect to any part of the Project infringing any third party rights of any kind.

5.2 Save as set out in paragraph 5.1, the Client shall defend, indemnify and hold harmless BPMD and its partners and employees from and against any and all claims made by third parties for damages, losses, expenses or costs (including legal fees and expenses) arising out of or in connection directly or indirectly with the Project, provided that BPMD (a) allows the Client conduct of the defence of such claim, including

any settlement, (b) makes no prejudicial admission or statement, (c) notifies the Client promptly of any claim and (d) actively co-operates and assists the Client, at its expense, in the defence of the claim.

6 INTELLECTUAL PROPERTY RIGHTS

6.1 The copyright and all other proprietary rights existing now or in the future in all computer programs, documentation and other materials (“the Works”) arising from BPMD’s performance of the Project (whether conceived or developed individually or jointly with the Client and others) shall belong to and be the absolute property of the Client. At the request and expense of the Client, BPMD will do all such things and sign all documents reasonably necessary to enable the Client to obtain all such rights in the Works.

6.2 The Client acknowledges that in the course of its performance of the Project BPMD may use products, software, materials or methodologies owned by BPMD or licensed to BPMD by a third party or BPMD may produce proprietary materials or methodologies that are not part of the deliverables. The Client agrees that it will not have nor obtain rights in such the same except pursuant to a separate written agreement on terms to be agreed and the Client agrees to maintain the confidentiality of such items.

6.3 In no event shall BPMD be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Works. In addition, BPMD shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of the Project.

7 RESPONSIBILITIES OF THE CLIENT

7.1 The Client agrees to provide BPMD promptly with accurate and complete information concerning its activities, decisions and approvals relevant to the Project.

7.2 If any of BPMD’ Personnel work on the Client’s premises, the Client will provide such personnel with suitable office accommodation and services, and full and free access to any required computing facilities.

7.3 The Client is responsible for the provision of suitable environmental conditions, including electrical supplies, at its premises.

7.4 The Client will ensure that all computing and ancillary facilities provided to BPMD’ personnel for use in connection with the Project and the working environment at the Client’s premises will comply with all applicable health and safety regulations including the Health and Safety (Display Screen Equipment) Regulations 1992.

7.5 The Client acknowledges that European Monetary Union preparation or compliance, either generally or in relation to particular systems and processes, is a matter which remains solely the Client’s business responsibility. BPMD cannot and does not take any responsibility in respect of such preparation or compliance in providing services to the Client as part of the Project.

8 TERMINATION

8.1 Without affecting any other rights and remedies it might have, BPMD shall be entitled to terminate the Project and/or the Arrangement Letter at any time without liability to the Client by giving written notice to the Client at any time if the Client:

8.1.1 commits any material breach of the Business Terms or Arrangement Letter and (in the case of a breach capable of being remedied) shall have failed to remedy such breach within [30] days after receiving a written notice of such breach referring to this clause 8.1.1 and requiring such breach to be remedied within such [30] day period.

8.1.2 fails to pay any Charges or other sums due under the Business Terms or Arrangement Letter;

8.1.3 has any corporate action, application, order, proceeding or appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts as they fall due, or if it ceases to trade or if a distress, execution or other legal process is levied against any of its assets or if any event analogous to any of the foregoing shall occur in any jurisdiction in which the Client is incorporated, resident or carries on business;

8.2 Any termination however caused shall not affect:

8.2.1 any right or liabilities which have accrued prior to the time of termination;

8.2.2 the continuance in force of any provision of these Business Terms which expressly or by implication is intended to come into or continue in force after termination including without limitation clause 3 (Confidentiality), clause 4 (Liability and Insurance) and clause 5 (Indemnities).

8.3 Upon termination however caused the Client shall immediately return any information or materials in its possession or under its control which belong to or were supplied by BPMD.

9 FORCE MAJEURE

9.1 Subject to clause 9.2, neither BPMD nor the Client shall not be liable for any delay or failure to perform its obligations as a result of an event outside its reasonable control, including but not limited to failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

9.2 However nothing in this clause 9 shall relieve the Client from its obligation to pay the Charges or any other sums due from the Client to BPMD.

10 QUALITY ASSURANCE

The Client agrees, if so requested by BPMD, to allow representatives of the British Standards Institution access to the Client's premises, and to co-operate, so far as is reasonable, with such representatives.

11 RECRUITMENT OF PERSONNEL

Neither party will for the duration of the Project and for a period of 6 months after its termination (for whatever reason), directly or indirectly solicit for employment, nor offer employment to, nor enter into any contract for services with any person who, at the time of such action or during a period of 6 months immediately preceding such action, was employed or engaged on the Project by the other party.

12 THIRD PARTY RIGHTS



Nothing in these Business Terms or the attached Arrangement Letter is intended to confer any benefit on any third party (whether referred to herein by name, class, description or otherwise) or any right to enforce a term of these Business Terms or the attached Arrangement Letter.

13 ENTIRE AGREEMENT

The Arrangement Letter and these Business Terms constitute the entire agreement between the Client and BPMD relating to the Project and supersede all previous communications, representations and arrangements, written or oral, except in respect of any fraudulent misrepresentation made by either party. The Client acknowledges that no reliance is placed on any representation made but not embodied in the Arrangement Letter and these Business Terms. The printed terms of any purchase order and other communications issued by the Client in connection with the Project will not apply unless accepted in writing by BPMD. No variation will be effective unless in writing and signed by authorised representatives of both parties. In the event of any conflict between the terms of the Arrangement Letter and these Business Terms, the terms of the Arrangement Letter shall prevail.

14 ASSIGNMENT

14.1 BPMD's rights, benefits and/or obligations under the Arrangement Letter and these Business Terms may be assigned or novated (as appropriate) to BPM-Discipline UK Limited, its successors or assigns, or to any BPMD Affiliate. For the purposes of the Arrangement Letter and these Business Terms, "BPMD Group" means: BPM-Discipline UK Limited and BPMD Affiliates.