

RED OAK CONSULTING TERMS AND CONDITIONS (the “Terms”)

Agreed terms

1. Definitions and interpretation

The definitions and rules of interpretation in this clause apply in this contract.

“Business Day”	a day other than a Saturday, Sunday or public holiday in England, when banks in London are normally open for general business;
“Client Materials”	all materials, equipment and tools, drawings, specifications and data supplied by the Client to the Service Provider;
“Confidential Information”	all information that is proprietary or confidential and is either clearly labelled as such or identified as confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors to the other party in connection with this Contract, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure;
“Contract”	together the Scope of Work, Contract Details and Quotation and the Terms;
“Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI2003/2426) as amended;
“Deliverables”	all documents, products and materials developed by the Service Provider or its agents, subcontractors and personnel as part of or in relation to the supply of Services as set out in the Contract Details;
“Fees”	the charges payable by the Client for the supply of the Services by the Service Provider as set out in the Contract Details;

“Intellectual Property Rights”	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, computer hardware architectures, computer hardware designs, firmware (regardless of implementation), application programming interfaces (APIs), hardware copyrights, test designs, test structures, test architectures, computer software application tuning parameters, computer software application optimisation parameters, computer hardware tuning parameters, computer hardware optimisation parameters, know-how, rights in designs and inventions, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Services”	the services, including without limitation any Deliverables, to be provided by the Service Provider pursuant to the Contract, as described in the Quotation and Contract Details;
“Services Start Date”	the date on which the Service Provider is to start provision of the Services, as set out in the Contract Details;
“Service Provider IPRs”	all Intellectual Property Rights subsisting in the Deliverables excluding any Client Materials incorporated in them; and
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018.

- 1.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.

- 1.3 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.4 A reference to a statute or a statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 A reference to **writing** or **written** includes email but not fax.

2. Commencement and term

The Contract shall commence on the date on which it is signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until the Service Provider has delivered the Services.

3. Supply of services

- 3.1 The Service Provider shall supply the Services to the Client from the Services Start Date in accordance with the Contract.
- 3.2 The Service Provider shall use reasonable endeavours to meet the performance dates specified by the Client providing any such dates are reasonable. The Client agrees that any such dates shall be an estimate only and time of the delivery of such Deliverables shall not be of the essence of the Contract.

4. Client's obligations

- 4.1 The Client shall co-operate with the Service Provider in all matters relating to the Services and shall use its reasonable endeavours to provide all pertinent information is provided to the Service Provider that is necessary for the Service Provider's provision of the Services and the Client shall provide such information in a timely manner and ensure it is accurate and complete in all material respects.
- 4.2 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.3 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).

- 4.4 If the nature of the Services requires that the Service Provider has access to any location, access to which is lawfully controlled by the Client, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client as required.
- 4.5 The Client shall provide all hardware, network connections and telecommunications links to the internet and other things necessary to access the Services.
- 4.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of this clause 4 shall not be the responsibility or fault of the Service Provider, and the Service Provider shall:
- (a) not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
 - (b) be entitled to payment of the Charges despite any such prevention or delay; and
 - (c) be entitled to recover any additional costs, charges or losses the Service Provider sustains or incurs that arise directly or indirectly from such prevention or delay. Such losses shall include, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere.
- 4.7 The Client shall not, without the prior written consent of the Service Provider, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Service Provider or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of the Service Provider.

5. Client Material

- 5.1 The Client shall own all rights, title and interest in and to all of the Client Material and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Client Material. The Service Provider shall have access to, export, translate and modify the Client Material to the extent reasonably required in connection with the provision of the Services.
- 5.2 The Client is responsible for retaining a copy of all material supplied to the Service Provider.
- 5.3 In the event of any loss or damage to Client Material, the Client shall have no remedy against the Service Provider.

6. Data protection

The parties acknowledge and shall comply with their data protection obligations as required by the Data Protection Legislation.

7. Intellectual property

7.1 The Service Provider shall retain ownership of any and all IPRs that may subsist in any Deliverables produced by the Service Provider in the course of providing the Services.

7.2 Upon receipt of all sums due under the Contract, the Service Provider shall grant the Client a non-exclusive, worldwide, non-exclusive, royalty-free, licence to the Deliverables.

8. Charges and payment

8.1 In consideration for the provision of the Services, the Client shall pay the Service Provider the Charges in accordance with this clause 8.

8.2 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Quotation. The total price shall be paid to the Service Provider as set out in the Quotation. The Service Provider shall invoice the Client for the charges that are payable together with reasonable expenses, and VAT (which the Service Provider shall add to its invoices at the appropriate rate).

8.3 The Client shall pay each invoice submitted to it by the Service Provider in full, and in cleared funds, within 30 days of the date of the invoice.

8.4 Without prejudice to any other right or remedy that the Service Provider may have, if the Client fails to pay the Service Provider on the due date the Service Provider may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and suspend all Services until payment has been made in full.

8.5 All payments payable to the Service Provider under the Contract shall become due immediately on termination of the Contract, despite any other provision.

8.6 All amounts due under this Contract shall be paid by the Client to the Service Provider in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Service Provider may, without prejudice to any other rights it may have, set off any liability of the Client to the Service Provider against any liability of the Service Provider to the Client.

9. Change control

- 9.1 If the Client wishes to change the scope of the Services, it is required to submit details in writing to the Service Provider. The Service Provider is under no obligation to proceed with the requested change.
- 9.2 On receipt of a requested change in writing, the Service Provider shall, within a reasonable time period:
- (a) Submit a new Quotation to the Client for acceptance; or
 - (b) Inform the Client that it is unwilling to change the scope of Services, stating its reasons.
- 9.3 If the Client accepts a new Quotation under clause 9.2, all previous Quotations are superseded and the scope of Services are changed accordingly.

10. Limitation of liability, Indemnity and Insurance

- 10.1 This clause 9 sets out the entire financial liability of the Service Provider (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client:
- (a) arising under or in connection with this Contract;
 - (b) in respect of any use made by the Client of the Services, or any part of them; and
 - (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 10.2 Except as expressly and specifically provided in this Contract:
- (a) the Client assumes sole responsibility for results obtained from the use of the Services by the Client, and for conclusions drawn from such use. The Service Provider shall have no liability for any damage caused by errors or omissions in any information provided to the Service Provider by the Client in connection with the Services, or any actions taken by the Service Provider at the Client's director; and
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.
- 10.3 Nothing in the Contract nor in these terms and conditions shall limit or exclude the Service Provider's liability for death or personal injury.

- 10.4 The Service Provider's total aggregate liability in contract, tort (including negligence or breach of statutory duty however arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. Termination

- 11.1 This Contract will automatically expire on the delivery of the Services.
- 11.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of [14] days after being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 11.3 Without affecting any other right or remedy available to it, the Service Provider may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for whatever reason:
- (a) any licence granted under this Contract shall immediately terminate;
 - (b) each party shall return and make no further use of any equipment, property, materials and other items (and copies of them) belonging to the other party;
 - (c) the Client shall immediately pay to the Service Provider all of the Service Provider's outstanding unpaid invoices and interest and, in respect of Services

supplied but for which no invoice has been submitted, the Service Provider may submit an invoice, which shall be payable immediately on receipt;

- (d) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- (e) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12. Force majeure

- 12.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network or the internet, act of God, acts of government 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 or storm, epidemic or pandemic, acts of terror, strikes, telecommunications or network failures or delays, computer failures involving hardware or software not within the Service Provider's possession or reasonable control and acts of vandalism, (including malicious cyber-attack), provided that the party claiming relief has taken reasonable technical measures to anticipate such eventualities.
- 12.2 In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for one month, the party not affected may terminate this Contract by giving [30] days' written notice to the other party.

13. Assignment and other dealings

- 13.1 The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Service Provider's prior written consent.
- 13.2 The Service Provider may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

14. Confidentiality

14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

14.2 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract,:

- (a) disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 14.2; and
- (b) make any copy of or record in any way any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 14.2.

For the purposes of this clause 14.2, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

14.3 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.4 Neither party shall use any other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

15. Entire agreement

- 15.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2 Each party acknowledges that in entering into the Contract, it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
- 15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16. Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18 shall not affect the validity and enforceability of the rest of the Contract.

19. Notices

- 19.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 19.2 Any notice or communication shall be deemed to have been received:
 - (a) if delivered by hand, at the time the notice is left at the proper address; and

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.4 A notice given under the Contract is not valid if sent by email.

20. Partnership

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership, agency or joint venture between any of the parties. The Client may not make any commitment to a third party on behalf of the Service Provider.

21. Third party rights

This Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

22. Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

23. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.