

Terms of Business

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement:

Agreement: means the Terms and Conditions and the Letter of Engagement

Applicable Laws: all applicable laws, statutes, regulation [and codes] from time to time in force.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Charges: the sums payable for the Services as set out in a Letter of Engagement.

control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Your Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by You to Us in connection with the Services including the items provided pursuant to [Clause 6.1\(d\)](#).

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: any output of the Services to be provided by the Us to You as specified in the Letter of Engagement.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

Letter of Engagement: means the Letter of Engagement in which We set out any Services which we agree to provide to you.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing services under this agreement

Processing and process: have the meaning set out in section 1(1) of the Data Protection Act 1998.

Terms and Conditions: means these terms and conditions set out in this Terms of Business

VAT: value added tax chargeable under the Value-Added Tax Act 1994.

Services: the Services which are provided by Us to You as described in a Letter of Engagement.

We/Us: means Gray Matters Business Limited

You/Your: means the client set out in the Letter of Engagement

Your Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by You to Us in connection with the Services including the items provided pursuant to [Clause 6.1\(d\)](#).

1.2 Clause headings shall not affect the interpretation of this agreement. A **person** includes a natural person,

corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established. Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender. This Agreement shall be binding on, and continue to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns. A reference to a statute or 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. A reference to **writing** or **written** includes email. Any obligation on a party not to do something includes an obligation not to allow that thing to be done. A reference to **this Agreement** or to any other agreement or document referred to in this Agreement is a reference of this Agreement or such other document as varied or novated from time to time. 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.

1.3 In the event of conflict between the Terms and Conditions and the Letter of Engagement, the Letter of Engagement shall prevail.

2. COMMENCEMENT AND DURATION

2.1 This Agreement shall commence on either:

2.1.1 the date set out in the Letter of Engagement

2.2 Where We are engaged to provide Services under a Letter of Engagement, the Agreement shall continue unless terminated earlier in accordance with [Clause 12](#) unless terminated as set out in the Letter of Engagement.

3. OUR RESPONSIBILITIES

3.1 We shall use reasonable endeavours to provide the Services, and deliver the deliverables to you, in accordance with either the Letter of Engagement

3.2 We shall use reasonable endeavours to meet any performance dates or deliver any events specified in a Letter of Engagement but any such dates shall be estimates only and time for performance by Us shall not be of the essence of this Agreement.

4. YOUR OBLIGATIONS

4.1 You shall:

(a) co-operate with Us in all matters relating to the Services;

(b) provide, for Us, Our agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to Your premises, office accommodation, data and other facilities as reasonably required by Us including any such access as is specified in a Letter of Engagement;

(c) provide Us in a timely manner all document, information, items and materials in any form (whether owned by the You or a third party) required under a Letter of Engagement or otherwise reasonably required by Us in connection with the Services and ensure that they are accurate and complete in all material respects;

(d) comply with any additional responsibilities as set out in the relevant Letter of Engagement.

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4.2 If Our performance under this Agreement is prevented or delayed by any of Your acts or omissions, or those of Your agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy We may have, We shall be allowed an extension of time to perform Our obligations equal to the delay You have caused.

5. NON-SOLICITATION

5.1 You shall not, without our prior written consent at any time from the date on which any Services commence to the expiry of 6 months after the completion of such Services, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Us in the provision of such Services.

5.2 Any consent We give in accordance with [Clause 5.1](#) shall be subject to You paying to Us a sum equivalent to 25% of the then current annual remuneration of Our employee, consultant or subcontractor or, if higher, 25% of the annual remuneration You will pay to that employee, consultant or subcontractor.

6. CHANGE CONTROL

6.1 Where we have agreed a Letter of Engagement, either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until an updated Letter of Engagement has been signed by both parties. Such updated Letter of Engagement shall set out the proposed changes and the effect that those changes will have on:

- (a) the Services;
- (b) the Charges;
- (c) any timetable for the Services; and
- (d) any of the other terms of the relevant Letter of Engagement.

7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Services by Us, the You shall pay the Charges.

7.2 The Charges exclude the following, which shall be payable by You, following submission of an appropriate invoice(s):

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom We engage in connection with the Services; and
- (b) the cost to Us of any materials or services procured by Us from third parties for the provision of the Services as such items and their cost are approved by You in advance from time to time.

7.3 Where we agree Services in a Letter of Engagement,

- (a) We shall invoice You for the Charges at the intervals specified in the Letter of Engagement. If no intervals are agreed, we may invoice you at the beginning of each month for Services to be performed during that month; and
- (b) You shall pay each invoice submitted to it by Us within 7 days of the date of the invoice to a bank account nominated in writing by Us from time to time unless specified otherwise in the Letter of Engagement.

7.4 Without prejudice to any other right or remedy that We may have, if You do not pay Us any sum due under this Agreement on the due date:

- (a) You shall pay interest on the overdue amount at the rate of 4% per annum above NatWest Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount; and
- (b) We may suspend part or all of the Services until

payment has been made in full.

7.5 All sums payable to Us under this Agreement:

- (a) are exclusive of VAT, and You shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- (b) shall be paid by You in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. INTELLECTUAL PROPERTY RIGHTS

8.1 In relation to the Deliverables:

- (a) We and our licensors shall retain ownership of all IPRs in the Deliverables and all IPR created in the course of providing the Services, excluding the Customer Materials;
- (b) We grant You, or shall procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Your Materials) for the purpose of receiving and using the Services and the Deliverables in the course of your ordinary business only; and
- (c) You shall not sub-license, assign or otherwise transfer the rights granted in clause 8.1 (b) other for internal purposes in the course of your ordinary business.

8.2 , You and Your licensors shall retain ownership of all IPRs in Your Materials; and grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify Your Materials for the purpose of providing the Services to You.

8.3 We:

- (a) warrant that the Deliverables shall not infringe any Intellectual Property Rights of any third party;
- (b) shall, subject to [Clause 11.3](#) keep You indemnified against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by You as a result of or in connection with any claim brought against You for actual or alleged infringement of a third party's Intellectual Property Rights to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with the Deliverables; and
- (c) shall not be in breach of the warranty at [Clause 8.3\(a\)](#), and You shall have no claim under the indemnity at [Clause 8.3\(b\)](#) to the extent the infringement arises from:
 - (i) the use of Customer Materials in the development of, or the inclusion of Your Materials in the Services or any Deliverable;
 - (ii) any modification of the Services or any Deliverable, other than by Us or on Our behalf; and
 - (iii) compliance with Your specifications or instructions.

8.4 You:

- (a) warrant that the receipt and use in the performance of Our obligations under this Agreement by Us, Our agents, subcontractors or consultants of the Your Materials shall not infringe any Intellectual Property Rights of any third party; and
- (b) shall keep Us indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Us as a result of or in connection with any claim brought against Us, Our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of Your Materials.

8.5 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this [Clause 8.](#), the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the

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indemnity at [Clause 8.3\(b\)](#) or [Clause 8.4\(b\)](#) (as applicable) (IPRs Claim);

(b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

(c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

(d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

9. DATA PROTECTION

9.1 The Parties acknowledge that for the purposes of the Data Protection Act 1998, You are the Data Controller and We are the data processor in respect of any Personal Data and We shall process the Personal Data in accordance with Your instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by You.

9.2 Each party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of the Data Protection Act (1998) to the extent it applies to them.

10. CONFIDENTIALITY

10.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party (except as permitted by [Clause 10.2](#)) at any time during this Agreement, and for a period of three years after termination of this Agreement.

10.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this [Clause 10](#); and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

11. LIMITATION OF LIABILITY

11.1 Nothing in this agreement shall limit or exclude Our liability for:

(a) death or personal injury caused by Our negligence;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to [Clause 11.1](#), We shall not be liable to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

(a) loss of profits;

(b) loss of sales, opportunity or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of or damage to goodwill;

(f) loss of use or corruption of software, data or information; or

(g) any indirect or consequential loss.

11.3 Subject to [Clauses 11.1 and 11.2](#), the Our total liability to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to one hundred per cent (100%) of the Charges paid by You under this agreement in the 12 months prior to the date on which the claim arose.

11.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of this Agreement and such breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(f) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(g) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(h) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;

(i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events

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mentioned in [Clause 12.1\(c\)](#) to [Clause 12.1\(i\)](#) (inclusive); or

(j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.2 Without affecting any other right or remedy available to it, We may terminate this Agreement (and any other agreement We have with You) with immediate effect by giving written notice to You if You fail to pay any amount due under this Agreement on the due date for payment and remain in default not less than 14 days after being notified to make such payment; or there is a change of control of the Customer.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of this Agreement You shall:

(a) You shall immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We may submit an invoice, which You shall pay immediately on receipt;

(b) We shall on request return any of the Your Materials not used up in the provision of the Services; and

(c) the following clauses shall continue in force: [Clause 1](#). (Interpretation), [Clause 5](#). (Non-solicitation), [Clause 8](#). (Intellectual property rights), [Clause 10](#). (Confidentiality), [Clause 11](#). (Limitation of liability), [Clause 13](#). (Consequences of termination), [Clause 17](#). (Waiver), [Clause 19](#). (Severance), [Clause 21](#). (Conflict), [Clause 26](#). (Dispute Resolution), [Clause 27](#). (Governing law and Jurisdiction).

13.2 Termination or expiry of this Agreement shall not affect any 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 Agreement which existed at or before the date of termination or expiry.

14. FORCE MAJEURE

14.1 Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

(a) acts of God, flood, drought, earthquake or other natural disaster;

(b) epidemic or pandemic;

(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

(d) nuclear, chemical or biological contamination or sonic boom;

(e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

(f) collapse of buildings, fire, explosion or accident; and

(g) interruption or failure of utility service.

14.2 Provided We have complied with [Clause 14.4](#), if We are prevented, hindered or delayed in or from performing any of Our obligations under this Agreement by a Force Majeure Event We shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

14.3 We shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event notify You of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on Our

ability to perform any of Our obligations under the Agreement; and

(b) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of Our obligations.

15. ASSIGNMENT AND OTHER DEALINGS

We may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of Our rights under this Agreement.

16. VARIATION

Subject to Clause 6, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. WAIVER

17.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

17.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19. SEVERANCE

19.1 If any provision or part-provision of this Agreement 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 shall not affect the validity and enforceability of the rest of this Agreement.

19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. ENTIRE AGREEMENT

20.1 This Agreement 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.

20.2 Each party agrees that it 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 agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21. CONFLICT

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the

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provisions of this agreement shall prevail.

22. NO PARTNERSHIP OR AGENCY

22.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. THIRD PARTY RIGHTS

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

24. NOTICES

24.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in the Letter of Engagement

24.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post, at 9.00 am on the second Business Day after posting or at the time recorded

by the delivery service; and

- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

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

25. DISPUTE RESOLUTION

If any dispute arises in connection with this Agreement which the parties are unable to resolve, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

26. GOVERNING LAW AND JURISDICTION

This Agreement 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. 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 this Agreement or its subject matter or format.