

Terms of Business

1. INTERPRETATION

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

Agreement: these Terms and Conditions and the Letter of Engagement.

Background IP: all IP Rights in know-how, analysis and methodology, together with all Intellectual Property Rights developed or created before the Deliverable in question was created;

Business Day: a day other than a Saturday, Sunday or public holiday in England.

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.

Client Materials: all documents, information, items and materials in any form, whether owned by you or a third party, which are provided by you to us in connection with the Services.

Confidential Information: has the meaning set out in Clause 10.

Data Protection Legislation: the General Data Protection Regulation 2016 and the Data Protection Act 2018.

Deliverables: any materials we provide to you under the Services, including reports.

IP Rights: patents, copyright and neighbouring and related rights, moral rights, trade marks rights in designs, database rights,) 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: the Letter of Engagement setting out the Services which we agree to provide to you and the Charges you agree to pay.

Legislation
Terms and Conditions: means these terms and conditions

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

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

we/us: Gray Matters Business Limited

you/your: the client set out in the Letter of Engagement

1.2 Clause headings shall not affect the interpretation of the 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. The Agreement shall be binding on, and continue to the benefit of, the parties to this Agreement and their respective successors and permitted assigns, and references to any party shall include that party's 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. 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 these Terms and Conditions and the Letter of Engagement, the Letter of Engagement shall prevail.

2. COMMENCEMENT AND DURATION

2.1 The provision of the Services shall commence on the date set out in the Letter of Engagement unless otherwise agreed.

and shall continue unless terminated earlier in accordance with [Clause 12](#) or in accordance with any termination rights set out in the Letter of Engagement.

3. OUR RESPONSIBILITIES

3.1 We shall provide the Services in accordance with the terms of the Agreement and with reasonable skill and care.

3.2 We shall use reasonable endeavours to meet any performance dates for the provision of the Services or any Deliverables specified in a Letter of Engagement but (a) any such dates shall be estimates only and time for performance by us shall not be of the essence of the Agreement; and (b) if we are delayed because 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 caused.

3.3 You agree that any delay by you to provide Client Materials and/or by your representative to confirm instructions or directions shall affect our ability to meet any performance dates.

3.4 You acknowledge that we shall be entitled to use sub-contractors to carry out the Services. The identity of any sub-contractor engaged shall be determined at our sole discretion.

4. YOUR OBLIGATIONS

4.1 You shall:

- (a) co-operate with us in all matters relating to the Services;
- (b) provide to us 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 to us all Client Materials required under a Letter of Engagement or otherwise reasonably requested by us in connection with the Services and ensure that they are accurate and complete in all material respects; and
- (d) comply with any additional responsibilities as set out in the relevant Letter of Engagement.

4.2 You warrant that our use of the Client Materials in order to provide the Services shall not breach any applicable law or regulation and/or infringe any third party IP Rights. Nothing in the Client Materials contains

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any viruses or other computer programs intended to damage, detrimentally interfere with and/or surreptitiously intercept any system, network or platform. You shall indemnify us and our directors from and against all third party costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any breach of such warranties or otherwise in relation to the Client Materials.

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 by us as an employee, consultant or subcontractor in the provision of such Services. This restriction shall not apply to any individual who responds to you following a public advertisement.

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

5.3 You agree that the provisions of this Clause 5 are reasonable and necessary to protect our legitimate business interests. However, if any provision is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely approximating the intention of the parties.

6. CHANGE CONTROL

6.1 No additions or alterations can be made to the Services without our prior written agreement, and you acknowledge that we shall be entitled to amend the Charges to reflect any agreed additions or alterations to the Services. At our election, a significant change to the Services may require you to sign an amended Letter of Engagement.

7. CHARGES AND PAYMENT

7.1 In consideration of the provision of the Services by us, you shall pay the Charges.

7.2 The Charges exclude the following, which shall be payable by you, following submission of an appropriate invoice:

(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. No mark up or uplift shall be applied to such expenses, and we shall provide documentary evidence of such expenses; 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 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.

7.4 You shall pay each invoice 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.

7.5 Without prejudice to any other right or remedy that we may have, if you do not pay us any sum due under the 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.

7.6 All sums payable to us under the 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.

8. IP RIGHTS

8.1 Subject to Clause 8.2, and on receipt of the Fee, we assign to you the IP Rights in the Deliverables.

8.2 We and our licensors shall retain ownership of all Background IP in the Deliverables

We grant to 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 Background IP for the purpose of receiving and using the Services and the Deliverables in the course of your ordinary business only.

You shall not sub-license, assign or otherwise transfer the rights granted in this Clause 8.2 other than for internal purposes in the course of your ordinary business.

8.3 You and your licensors shall retain ownership of all IP Rights in the Client Materials and grant to us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the purpose of providing the Services to you.

9. DATA PROTECTION

9.1 In performing its obligations under the Agreement, each of us shall comply with the Data Protection Legislation.

9.2 Each of us agrees that in the course of providing the Services, we may receive and collect names, addresses and email addresses and other information relating to an identifiable person (the **Personal Data**). In doing so, we are the processor of the Personal Data and you are the controller of the Personal Data, as such terms are defined in the Data Protection Legislation. You warrant and represent that you may lawfully provide to us the Personal Data for the purposes of the Services.

9.3 We shall comply with our obligations as a processor under the Data Protection Legislation, and in particular we shall:

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- (a) only process the Personal Data to provide the Services and otherwise on your written instructions, which may be specific instructions or standing instructions of general application;
- (b) take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data;
- (c) at your request and choice either deliver up or delete the Personal Data from our systems on termination of the Services;
- (d) ensure that individuals processing the Personal Data for us are subject to a duty of confidence in relation to the Personal Data;
- (e) only engage sub-processors under a written contract reflecting the obligations in this Condition 9.3;
- (f) not transfer the Personal Data outside of the United Kingdom except contract reflecting the obligations in this Condition 9.3
- (g) assist you in providing subject access and allowing data subjects to exercise their rights under the Data Protection Legislation;
- (h) assist you to meet your legal obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- (i) submit to audits and inspections by you to ensure that we are complying with our obligations under this Condition 9 no more than once a year, subject to reasonable notice and during our working hours; and
- (j) notify you if we are requested to take any action in breach of the Data Protection Legislation.

10. CONFIDENTIALITY

10.1 Confidential Information shall mean all confidential information whether written or oral and in whatever medium and relates to the business, products, financial and management affairs, customers, employees or authorised agents, plans, proposals, strategies or trade secrets disclosed by one party (the **Disclosing Party**) to the other party (the **Receiving Party**) and that is marked confidential or is manifestly of a confidential nature.

10.2 The Receiving Party shall not, and shall ensure that its employees shall not, use copy or disclose any of the Confidential Information of the Disclosing Party except to carry out its obligations under the Agreement.

10.3 The Receiving Party shall only disclose the Disclosing Party's Confidential Information to those of its

employees to the extent that they need to know the same in order to carry out its obligations under the Agreement and where those employees are bound by written obligations of confidentiality and non-use and such obligations apply to the Confidential Information disclosed to them.

10.4 The provisions of Clauses 10.1, 10.2 and 10.3 shall not apply to any Confidential Information which:

- (a) is or becomes generally available to the public other than as a result of any act or omission of the Receiving Party;
- (b) is already in or comes into the possession of the Receiving Party from a person lawfully in possession of the information and owing no obligation of confidentiality to the Disclosing Party in respect of the information; or
- (c) is required to be disclosed by any court, government or administrative authority competent to require disclosure.

11. WARRANTIES, LIMITATION OF LIABILITY

11.1 We warrant that:

- (a) we shall provide the Services using reasonable skill and care;
- (b) the performance of the Services shall not breach any other agreement entered into by us;
- (c) in providing the Services, we shall not breach of any of the provisions of the Bribery Act 2010.

11.2 Each of us acknowledges that, in entering into the Agreement, it does not do so in reliance on any representation, condition, warranty or other provision except as expressly set out in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law. Without prejudice to the provisions of this Clause 11.2:

- (a) we do not warrant that any result or objective will be achieved or achievable as a result of the provision of the Services or implementation of any recommendation we provide to you;
- (b) we shall have no liability for any loss suffered by you as a result of our use in the Deliverables of the Client Content; and
- (c) the Deliverables are not to be read in isolation and you should continue to look at the market and all other information available to it in deciding how to operate your business.

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11.3 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.

11.4 Subject to Clause 11.3 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) wasted expenditure;
- (f) loss of use or corruption of software, data or information; or
- (g) any indirect or consequential loss whether or not we are advised of the possibility of such losses

11.5 Subject to Clauses 11.3 and 11.4, our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with each Letter of Engagement shall be limited to one hundred per cent (100%) of the Charges paid by You under the Letter of Engagement in the 12 months prior to the date on which the claim arose.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, either party may terminate the 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 the 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 enters into liquidation compulsorily or voluntarily or compounds with its creditors or has an administrator, receiver or administrative receiver appointed over all or any part of its assets or takes or suffers any similar action in consequence of debt (except where any action occurs for the purposes of reconstruction or amalgamation whilst solvent).

12.2 Without affecting any other right or remedy available to us, we may terminate the 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 the Agreement on the due date for payment and remain in default 7 days after being notified to make such payment; or if you undergo a change of control.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Agreement:

- (a) you shall immediately pay to us all 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 Client Materials in our possession or control; 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 26.](#) (Dispute Resolution), [Clause 27.](#) (Governing law and Jurisdiction) [NOTE: Cross references TBC on final draft].
- 13.2 Termination or expiry of the 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:

- (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 14.3](#), if we are prevented, hindered or delayed in or from performing any of our obligations under the Agreement by a Force Majeure Event we shall not be in breach of the 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

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of our rights under the Agreement.

16. VARIATION

Subject to Clause 6, no variation of the 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 the 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 the 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 the 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 the 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 the 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 the Agreement.

19.2 If one party gives notice to the other of the possibility that any provision or part-provision of the 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 The 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 the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

21. NO PARTNERSHIP OR AGENCY

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

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

22. THIRD PARTY RIGHTS

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

23. NOTICES

23.1 Any notice given to a party under or in connection with the 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

23.2 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.

23.3 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.

24. DISPUTE RESOLUTION

If any dispute arises in connection with the 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.

25. GOVERNING LAW AND JURISDICTION

The 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 the Agreement or its subject matter or format.