

## URBAN FOUNDRY LTD. - TERMS AND CONDITIONS

### 1. INTERPRETATION

1.1. Unless the context otherwise requires, the following phrases shall have the following meanings in these Terms and Conditions:

**“Agreement”** means, an agreement concluded on these Terms and Conditions, plus any documents referenced in them, including (but not limited to) the Quotation and any schedule of payments subsequently agreed;

**“Brief”** means the instruction given by the Client (which may be written or verbal) upon which the Company’s Quotation is based;

**“Client”** means the organisation or individual that has requested a Quotation from the Company, and/or receives Services from the Company;

**“Commission”** means the package of Services outlined in the Quotation;

**“Company”** means Urban Foundry Ltd., company number 6692527, whose registered office is situated at Unit 2, National Waterfront Museum, Swansea, SA1 3RD;

**“Data Controller”** has the meaning given in the Data Protection Legislation.

**“Data Processor”** has the meaning given in the Data Protection Legislation.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended.

**“Fees”** means the total net costs set out in the Quotation, including expenses and disbursements if specified explicitly in the Quotation, payable by the Client to the Company. The Fees (excluding expenses and disbursements) shall be subject to VAT at the prevailing rate;

**“Intellectual Property Rights”** means 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 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;

**“Normal Working Hours”** means between 9am and 5pm on weekdays, excluding weekends, bank holidays, and the period between Christmas Eve and New Year’s Day

inclusive. If the Company is to supply Services on the excluded days, the Services, including availability/times for the excluded days shall be specified in writing;

**“Parties”** means the parties to the Agreement;

**“Personal Data”** has the meaning given in the Data Protection Legislation;

**“Purchase Order”** means a document issued by the Client committing to pay the Company for undertaking the Commission, as set out in the Quotation.

**“Quotation”** means the written proposal/quotation provided to the Client by the Company for acceptance by the Client, setting out the Company’s anticipated or proposed costs, charges, or rates (for the avoidance of doubt this refers to the most recent Quotation submitted for the Commission and includes ‘tender’ documents and any supplementary supporting materials that were issued along with the summary of Services and the proposed Fees);

**“Services”** means the services provided by the Company, including but not limited to, event management, training/workshops, regeneration services, research, fundraising, and development and strategy advice;

**“Terms and Conditions”** means the terms and conditions set out in this document.

- 1.2. Any gendered terms used in this document are purely for convenience and the masculine shall apply to the feminine and vice versa. Similarly, words in plural shall also refer to the singular and vice versa.
- 1.3. The headings in these Terms and Conditions are for convenience only and shall not affect its interpretation.
- 1.4. Any reference to a clause or schedule shall be construed as a reference to a clause of, or schedule to, these Terms and Conditions, unless expressly stated to the contrary.

## 2. BASIS OF CONTRACT

- 2.1. The Client shall provide a Brief to the Company, setting out the details of the Services that it requires.
- 2.2. The Company shall provide a Quotation based on the information set out within the Brief. The Client warrants that the details and information set out in the Brief are true and accurate, to the best of its knowledge.
- 2.3. A Quotation is an offer by the Company to provide Services to the Client in accordance with these Terms and Conditions.
- 2.4. The Client shall accept a Quotation in writing by issuing a Purchase Order, or formal commissioning letter (or equivalent document). By accepting the Quotation, the Client agrees to purchase the Services and pay the required Fees, in accordance with these Terms and Conditions, at which point the Agreement comes into existence. The Company shall not amend the Terms and Conditions in respect of a specific Commission, other than by prior agreement between the Parties.

### 3. OBLIGATIONS

- 3.1. If at any point during the term of the Agreement, the information provided in the Brief becomes no longer true, accurate, relevant, complete, or sufficient for the completion of the Commission, the Client shall inform the Company immediately, and provide any further details as necessary.
- 3.2. The Client agrees to provide a named person as the point of contact for the Commission, and the Company shall be entitled to look to him/her for the support, direction and co-ordination needed in respect of undertaking the Commission. Any changes in these reporting lines shall be notified to the Company in writing as soon as possible. The named person must have sufficient authority to deal with the Company for the purposes of the Commission.
- 3.3. The Client agrees to supply any additional information relating to the Services required that may reasonably be requested by the Company, and acknowledges that failure to do so, or taking undue time to do so, may result in delays to the completion of the Commission, and the Company shall not be held responsible for any such delays.
- 3.4. Any documents provided by the Client to the Company should be provided electronically wherever possible. In cases where hard copy documents are provided, which are sensitive in nature, and/or are one of a kind to be returned in the same condition, the Client agrees that it is its responsibility to make the Company aware of this, and it shall do so in writing, in advance. The Client agrees to make copies of any sensitive or 'one of a kind' documents wherever possible and supply the Company with the copies. If this is not possible, then originals shall be provided in a meeting where the handover shall be noted by the Company, or sent to the Company via recorded postal delivery, and the Client agrees that it shall be responsible for organizing and maintaining insurance cover for any 'one of a kind' documents. The Company shall not accept liability for documents lost in the post. The Company agrees to keep any sensitive documents secure and shall return them (or delete them if provided electronically) at the end of the Commission.
- 3.5. The Client agrees that it is responsible for ensuring that, to the best of its knowledge and belief, information provided to the Company is clear, true, accurate, reliable and not misleading, and not in any way contrary to the laws of the United Kingdom. The Company reserves the right not to publish (whether physically or in any electronic form), any content that it considers at its sole discretion, to be illegal or libelous.
- 3.6. The Company agrees to assist the Client in preparing responses to any Freedom of Information (“**FOI**”) requests that the Client is required by law to respond to. Time spent on complying with such requests shall be chargeable, and this time can be deducted from time allocated to other tasks within the Commission, or an additional Fee can be levied to cover time spent. The Company allows for a modest amount of general administrative time with all Commissions, which are likely to cover basic correspondence in relation to small FOI requests, but protracted or detailed requirements may not be covered within this time. Time shall be charged in line with the day/hourly Fees set out in the Quotation. If the Client has not given confirmation

that the Company can levy additional charges by the time the Company is required to comply with the request, the Company shall deduct the time from the Commission allocation. If such a deduction results in the Company having to curtail the work in other areas to compensate, the Client agrees that this shall not constitute a breach of the Agreement. If the FOI request is submitted after the Company has completed work for the Client, the Company shall cooperate insofar as the Company is able, but the time taken to do so shall be chargeable at the Company's standard hourly rates.

- 3.7. With the exception of the quoted Fee, the contents of the Company's Quotations are deemed commercially sensitive, and therefore exempt from FOI requests. For the avoidance of doubt the Quotation may be disclosed to third parties but not its breakdown into specific task areas.
- 3.8. Unless stated otherwise in the Quotation, or in the event of an emergency, the Company shall only perform Services, and undertake work pursuant to the Commission, during Normal Working Hours.

## 4. INTELLECTUAL PROPERTY RIGHTS

- 4.1. Provided that the Company's Fees in undertaking the Commission (including any expenses and/or disbursements agreed) have been paid in full, the Intellectual Property Rights in all deliverables including but not limited to, text, photographic and audio-visual materials, produced specifically for the Commission, and accepted by the Client, shall rest with the Client, who shall acknowledge the work of the Company, when reproduced in any form or media.
- 4.2. No provision in these Terms and Conditions transfers the ownership of any Intellectual Property Rights owned by either Party, prior to the commencement of work in relation to the Commission (hereinafter "**Background IPR**").
- 4.3. Notwithstanding clause 4.1, the Company reserves the right to withdraw its name from any documents produced as a result of the Commission.
- 4.4. If the Company grants the Client a license to use any Background IPR, the Client may use these for the agreed duration of the Commission. Unless explicitly agreed otherwise between the Parties in writing in advance of the commencement of the Commission, the Client may not sell or grant licenses for any Background IPR to any third parties.
- 4.5. Should any work created pursuant to the Commission, include Intellectual Property Rights which are owned by a third party, the Company shall grant to the Client (at the Client's expense) only those rights that the third party has permitted the Company. If rights are based on instalment Fees, then any renewal arrangements and Fee instalments that fall following the cessation of the Agreement are the responsibility of the Client. The Company agrees in this instance to provide a full and detailed handover to make the Client aware of the requirements and able to fulfil renewals directly.

- 4.6. Quotations and any supporting materials remain as Intellectual Property Rights belonging to the Company at all times. No part of a Quotation may be provided to competitors or other organisations, or reproduced for any purposes, other than the Client's own internal procedures for appointing a contractor to conduct this Commission.
- 4.7. Nothing in these Terms and Conditions shall prevent the Company from using the name and logo of the Client in any list of clients used by the Company for its own promotional purposes, unless the Client has previously notified the Company in writing that it is unwilling for its name and/or logo to be used for such a purpose. It is the responsibility of the Client to ensure that any such notice has been received by the Company. The Company shall only use such logos in statements of fact to demonstrate that the Company has worked with/for the Client. The Company shall not use the Client's logo or name to suggest that the Client endorses the Company unless the Client has specifically provided the Company with a testimonial/reference for that purpose. Unless agreed otherwise by the Parties in advance in writing, the Company may use any materials or processes developed specifically for the Commission for any internal training purposes, including on a confidential basis with sub-contractors. Notwithstanding any assignment of rights, the Company may use any of the created work developed specifically for the Commission that has been entered into the public domain, subject to the written prior consent of the Client, which shall not be unreasonably withheld or delayed.
- 4.8. The Client agrees that it shall not disclose, attempt to sell, or gift any materials or processes that the Company provides as part of this Commission, unless explicitly agreed in writing by the Company in advance, or unless it is clearly stated as a requirement in the original Brief, and also specified in the Company's Quotation.

## 5. CONSENTS

- 5.1. The Client agrees to ensure that any and all necessary consents, licenses and authorisations, required from any person, firm, or authority for the Commission to proceed are in place prior to the commencement of work on the Commission, and shall supply the Company with evidence of this on demand, unless the securing of these is explicitly stated as part of the Commission.
- 5.2. Without prejudice to clause 5.1, the Client agrees to indemnify the Company against all actions, proceedings, costs, charges, claims, expenses, and demands arising from any failure on the part of the Client to obtain such consents.

## 6. LIABILITY

- 6.1. The Company shall undertake the Commission with reasonable care and skill.
- 6.2. The Company shall not be responsible for any losses, penalties, surcharges, interest or other liabilities, incurred by the Client, arising from any act or omission by the Client or failure by the Client, or any third party, to perform any relevant obligation.

- 6.3. The Client agrees to hold harmless and indemnify the Company against any losses suffered by the Company, as a result of use of, or reliance on, any incorrect, inaccurate, or misrepresented information, provided by the Client, either intentionally or unintentionally, verbally or in writing, in connection with the Agreement.
- 6.4. The Client agrees not to hold the Company liable for any failure to procure finance from any source.
- 6.5. The Client agrees that it is its responsibility to determine the risks associated with any particular course of action adopted as a result of the work undertaken by the Company pursuant to the Commission, including obtaining any and all legal and professional advice necessary in order to carry out those actions. The Client further agrees that it is its responsibility to competently deliver any actions, and that it shall not hold the Company liable for any failure of future actions taken as a result of advice or guidance, provided as part of the Commission, or any failure of future actions as a result of poor planning or execution on the part of the Client, its representatives, or any other entities.
- 6.6. The Client and the Company each agree to maintain at its own expense, comprehensive policies of insurance as appropriate, having regard to the circumstances and the provisions of the Agreement and to cover the liability of the other Party in respect of any act or default for which it may become liable to indemnify the other Party, under the Terms and Conditions.
- 6.7. Nothing in these Terms and Conditions limits any liability which cannot legally be limited, including but not limited to liability for:
  - 6.7.1. death or personal injury caused by negligence;
  - 6.7.2. fraud or fraudulent misrepresentation; and
  - 6.7.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.8. Subject to Clause 6.7, the Company shall, in no circumstances, be liable to the Client for:
  - 6.8.1. loss of profits;
  - 6.8.2. loss of sales or business;
  - 6.8.3. loss of agreements or contracts;
  - 6.8.4. loss of anticipated savings;
  - 6.8.5. loss of use or corruption of software, data or information;
  - 6.8.6. loss of or damage to goodwill; or
  - 6.8.7. indirect or consequential loss.
- 6.9. The Company's maximum aggregate liability to the Client shall not exceed a sum equal to 100% of the Fees paid in the 12 month period prior to the claim arising.

- 6.10. Where creative works are produced, the Company shall ensure that any such works are covered by its insurance policies, whilst on its premises. The Client shall provide for adequate insurance for such materials once they are in its possession, which includes during transit if collected from the Company by the Client, or if being collected from the Company by any third party collecting items on behalf of the Client. Any further transfer to other third parties is the sole responsibility of the Client to risk assess and insure as it deems necessary.

## 7. CONFIDENTIALITY

- 7.1. Each Party undertakes that it shall not, at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 7.2.
- 7.2. Each Party may disclose the other Party's confidential information:
- 7.2.1. 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 Agreement. 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 clause 7.1;
  - 7.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 7.3. Notwithstanding clause 7.2, neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 7.4. The Parties shall comply with the Data Protection Legislation where applicable, and the Company confirms that it is registered with the Information Commissioner's Office as a Data Controller.
- 7.5. The Company's Privacy Policy is available to view via a link in the footer of its website and provides full details of how the Company collects, handles and stores Personal Data.
- 7.6. The Client warrants that it is fully compliant with the Data Protection Legislation, and that it has the necessary policies, processes and procedures in place to ensure such compliance.
- 7.7. The Client acknowledges and accepts the Company's right to preserve the confidentiality of research and the identity of consultation respondents.
- 7.8. Where the Company is required to gather and transfer Personal Data to the Client as a Data Processor or as a Data Controller, the Company shall only do so where informed consent has been granted by individuals taking part in the Commission ("**respondents**"). For the avoidance of doubt in such instances, prior to gathering information, the Company shall make clear to respondents whether the Company is a Data Processor or Data Controller.



- 7.9. The Client agrees to inform the Company of any third parties with whom that it may share Personal Data, and the full range of purposes for which the Personal Data shall be used, so that the Company can provide full transparency at the point of gathering information, and be clear on its legal basis for collecting, processing and storing that Personal Data.
- 7.10. Where consent is the Company's legal basis for processing Personal Data, the Company shall always give individuals the choice of whether to continue, and the Company shall make consent as 'granular' as the Company can, in other words if the Personal Data is to be used for a variety of reasons by the Client as the Data Controller, then the Company shall give respondents the choice of which elements they opt in to. The Client agrees that where individuals refuse to provide their personal details it shall not constitute a breach of the Agreement. The Client further confirms that any Personal Data that is passed to it by the Company containing personal identifiers, is fully the responsibility of the Client, and that it has taken adequate precautions to ensure Personal Data is protected, and only used for the purposes for which it has been collected.
- 7.11. In cases where the Client is acting as a Data Controller, and transfers Personal Data that it has collected, for processing by the Company pursuant to the Commission, the Client shall ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company, for the duration and purposes of this Agreement.
- 7.12. In cases where the Company processes Personal Data on behalf of the Client, the Company shall:
- 7.12.1. process that Personal Data only on the instructions of the Client;
  - 7.12.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data;
  - 7.12.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 7.12.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained;
  - 7.12.5. assist the Client, at the Client's cost, in responding to any formal request from a data subject
  - 7.12.6. delete or return the Personal Data, at the request of the Client; and
  - 7.12.7. maintain complete and accurate records and information to demonstrate its compliance with the Data Protection Legislation.
- 7.13. The Client and the Company agree to inform the other immediately upon discovery of any breach of confidentiality, and the Client agrees to indemnify the



Company against any breaches of Data Protection Law that occur as a result of the actions or inactions of the Client or its partners.

- 7.14. For the avoidance of doubt, the Parties agree that any information that is already in the public domain (unless through unauthorised disclosure) is not deemed confidential.

## **8. RESEARCH, INDEPENDENCE, REPORTING, AND PRESENTATION**

- 8.1. In cases where the Services conducted pursuant to the Commission include research, where information is collected from individual respondents, the Client accepts and acknowledges the Company's independence and objectivity, and agrees not to undertake any activity that would directly or indirectly alter the responses of respondents to any research conducted by the Company.
- 8.2. The Company shall correct any factual, grammatical or typographical errors in written reports that the Company produces prior to submitting a final copy to the Client. The Company proofreads work internally prior to submitting the final version to the Client, but unless the Company has specified it in the Company's original Quotation, the Company does not appoint external proofreaders. The Company shall correct any minor typographical errors that the Company has missed in final reports at the Company's cost and resend them to the Client promptly, in electronic format with corrections, provided that they are promptly sent to the Company.
- 8.3. Where the Company is required to print anything for the Client as part of the Commission, the Company shall ask the Client to sign-off a final electronic version prior to doing so. If any typographical errors are discovered after the Client has signed off the final version and it has been sent to print, then all print costs remain payable in full. In this instance, the Company shall accept one set of final amendments (which must be restricted to typographical errors only) and the Company shall correct any such errors and return a copy in electronic format at the Company's own cost, but the Client agrees to meet the cost of any reprints in full on top of the Company's Fees set out in the original Quotation. For the purposes of billing, any such reprints shall be treated in the same way as any other materials purchased on behalf of a Client.
- 8.4. The Company shall give fair consideration to any reasonable amendments that the Client requests to any written reports the Company produces that relate to style, presentation, interpretation or opinion, but in Commissioning the work the Client acknowledges the Company's independence, and the Company's right to refuse to make such changes, and agrees that the Company's refusal to make such amendments shall not constitute a breach of the Agreement, or grounds for withholding any payment. In the event that the Company cannot agree changes with the Client, the Company shall make it clear that it is the Company's final position and at that point the Client agrees not to withhold sign-off of a final report.
- 8.5. When considering amendments to reports where the Company is responsible for creating the text and most or all artwork, then the Company shall make a reasonable number of amendments to correct errors, but the Client agrees to a 'fair use' of the Company's time. Particularly, the Client agrees to collate all internal feedback into one

set of comments per draft, which are specific, non-conflicting, and represent the Client's wishes. Time spent dealing with conflicting or confusing requirements for amendments is billable at the Company's standard hourly rates and is not included in the Quotation. Without prejudice to clause 8.2, once an initial set of changes has been made, the Company shall allow for up to two further sets of amendments to written reports, but further changes after a first set of comments from a Client should be restricted to matters of style/minor clarification/typographical errors. Any further rounds of amendments to written reports after a third iteration are not included in fixed-fee Quotations and shall be charged at the Company's standard hourly rates.

- 8.6. The Company shall not undertake externally commissioned proof reading or translation, unless it is specified in the Brief, and the Company has specified this in the Quotation. If the Company produces written content, or has specified proof reading in the Company's Quotation, this shall only be done once all other content is signed-off.
- 8.7. For any design work using text and artwork provided by a Client, the Company requires these to be provided in appropriate formats without ambiguity, and it is the Client's responsibility to ensure that all text is proofread and correct and that the correct logos/artwork have been provided (unless the creation of artwork/text; amendment into certain formats; and/or proof reading is explicitly stated as part of a written Brief).
- 8.8. For any design work, the Fees allow for one set of iterations, which must be collated and unambiguous. Any further amendments shall be charged at the Company's standard hourly rate.
- 8.9. The Client agrees that any delay in completion of a Commission due to a Client's inability to secure feedback and/or sign-off within a reasonable timescale (at most 30 days from the Company requesting that feedback from the Client) shall not constitute a breach of the Agreement.
- 8.10. If the Company's invoicing is subject to receiving the Client's feedback or sign-off on a stage of work then the Client agrees that, if the Client takes more than 30 days to feedback/sign-off on reports, the Company may submit the Company's invoice(s) and that the Client shall pay the Company's invoice(s) in full in accordance with the Company's standard payment terms (as specified on the Company's invoices).
- 8.11. The Client agrees not to amend or alter the findings of any reports produced by the Company during or after the Commission, nor to misrepresent the conclusions/findings. If amendments are made by the Client in an electronic document to illustrate a desired change, they must be clearly marked as tracked changes/comments or similar when returned to the Company, and the Company reserves the right to refuse to make such changes. If the Client wishes to use certain passages/phrases from the reports for marketing or other purposes then it may do so, and the Company accepts that the Client shall use positive elements for publicity purposes. The Client, however, agrees not to intentionally misrepresent the Company's work through selective use of text that is misleading in comparison to the overall findings.

8.12. The Company reserves the right to remove its name from any reports/materials it produces, if the Company does not feel that clauses 8.1 to 8.11 have been complied with by the Client.

8.13. The Client agrees that its relationship with the Company shall be communicated to third parties accurately. The Client shall not make public statements claiming, suggesting or implying any endorsement by the Company, without the prior written consent of the Company.

## **9. CLIENT'S PERSONNEL, PREMISES AND EQUIPMENT**

9.1. If the Company is required, as part of the Commission, to work on the Client's premises, the Client agrees to provide the Company with office accommodation, meeting space(s), telephone, fax, photocopying and minor secretarial services that are directly related to the Commission, without charge or deduction of Fees. Any advertisements for activities relating to the Commission, or reproductions of consultation materials in publications owned or produced by the Client shall be provided at no cost to the Company.

9.2. Any staff or volunteers provided by the Client to provide assistance with any functions in relation to the Company's Services, or any equipment provided by the Client, shall be provided at the Client's own risk and cost (including any related expenses).

9.3. The Client agrees to ensure that all personnel that it makes available to contribute to the Commission (including volunteers), are competent to the tasks that they are required to perform. The Client agrees to ensure that its personnel give adequate support to allow the Company to complete the Commission. For the avoidance of doubt, this includes an expectation of a reasonable quality of communication (both written and verbal).

9.4. The Company shall not be liable for the failure of personnel (including volunteers), or equipment provided by the Client.

9.5. The Client shall indemnify the Company against all costs, demands, claims, expenses, losses and damages including legal costs and Fees incurred by the Company arising from the negligent act or omission of staff or volunteers provided by the Client, and/or failure of any of its equipment.

9.6. The Client shall maintain appropriate levels of public and employee liability cover, the latter to cover volunteers, and the Client shall ensure that such cover is in place for any other sub-contractors or third parties that the Client requires the Company to work with.

9.7. Any articles used as part of the Commission that are brought by the Client, its personnel, volunteers, partners or customers/beneficiaries are solely its own responsibility, and the Company shall not be liable for any loss or damage thereto.

## 10. FORCE MAJEURE

- 10.1. Neither Party accepts liability for non-fulfilment of any obligation under the Agreement, due to forces beyond its control, including, without limitation:
- 10.1.1. acts of God, flood, drought, earthquake or other natural disaster;
  - 10.1.2. epidemic or pandemic;
  - 10.1.3. 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;
  - 10.1.4. nuclear, chemical or biological contamination or sonic boom;
  - 10.1.5. 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;
  - 10.1.6. collapse of buildings, fire, explosion or accident;
  - 10.1.7. non-performance by suppliers or subcontractors; and
  - 10.1.8. interruption or failure of utility service.
- 10.2. Provided it has complied with Clause 1.4, if a Party is prevented, hindered or delayed in performing any of its obligations under the Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party 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.
- 10.3. The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 10.4. The Affected Party shall:
- 10.4.1. as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing 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 its ability to perform any of its obligations under the agreement; and
  - 10.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks, the Party not affected by the Force Majeure Event may terminate the Agreement by giving two weeks' written notice to the Affected Party.

## **11. CHARGES AND PAYMENT**

- 11.1. Fixed-fee Commissions shall have a defined set of deliverables at the outset, with a clear start and finish date, and a set overall Fee, as set out in the Quotation. Where Commissions are on a fixed-fee basis, an invoicing schedule shall be agreed with the Client at the outset of the Commission. Payment(s) shall be made by the Client in line with the agreed schedule, regardless of time incurred during that period, notwithstanding non-delivery/non-completion of other instalments or other default by the Company. If the Client wishes to re-profile the invoicing schedule to reflect changing requirements then The Company shall accommodate this to meet the Client's reasonable demands, but this must be agreed in advance prior to the Company issuing an invoice.
- 11.2. Where Commissions carry a fixed-fee, then the full Fee is payable for completion of the agreed deliverables, regardless of the time expended by the Company. If the Company has underestimated or overestimated the time it shall take to complete the Commission as advertised, it shall have no impact on the Fee. If the Client wishes to amend the Commission and/or faces unexpected difficulties, which result in the workload of the Commission significantly increasing due to factors beyond the control of the Company, the Company shall discuss with the Client whether to reduce other parts of the Commission to compensate for this, or to increase the Fees. When issuing Quotations, the Company allows for a modest amount of general project management time, which includes general correspondence with the Client. This provision is made on a 'fair use' basis. If the time dealing with queries becomes excessive, the Company shall let the Client know and agree with the Client whether to reduce other areas of the work accordingly, or to increase the Fees. The Client confirms that any delays or inability to deliver the full Commission within a fixed-fee as a result of excessive time taken dealing with administrative requests from the Client (including FOI requests) shall not constitute a breach of the Agreement.
- 11.3. Where Commissions are not on a time-limited, fixed-fee basis, the Company shall specify in advance whether Fees are charged under a 'retainer' style Agreement, or on a 'pay as you go' basis, as described in clauses 11.4 and 11.5.
- 11.4. For 'pay as you go' arrangements the Company shall charge for the Company's time on a per hour basis for all time incurred working for the Client. The Company shall invoice for the Company's time monthly in arrears unless the Company has agreed otherwise with the Client in writing prior to commencing the Commission. For 'pay as you go' Agreements, the Company shall invoice for the time in whole hours with a minimum charge of 1 hour. For all 'pay as you go' arrangements, expenses are charged monthly in arrears in addition to Fees for the Company's time.
- 11.5. For 'retainer' arrangement the Company shall agree in advance a set allowance of hours or days for a set period, but with potential to continue extending this. Under a retainer Agreement the Client can call on the Company during Normal Working Hours, as and when required within the agreed retainer period, and the Company shall make itself available to deliver tasks for the Client within a reasonable period of receiving notification from the Client. Whilst there may be defined deliverables at the

outset of retainer Agreements, under a retainer arrangement the Company agrees that these may be amended/varied as the work progresses to suit the Client's needs. Unless the Company has agreed otherwise in advance with the Client, retainers are set in quarterly increments with a minimum initial period of two consecutive quarters. For retainer Agreements, the Company shall invoice for the agreed time for the period in full in advance. Fees for retainers are payable within the Company's invoice payment terms. For all retainer Agreements expenses are charged monthly in arrears in addition to Fees for the Company's time.

- 11.6.If the Client is going to exceed the allocated time for a 'retainer' Agreement the Company shall let the Client know prior to doing so. Any additional time used shall be chargeable at the Company's standard hourly rates on the 'pay as you go' basis unless the Client commits to a renewal of the retainer. The Company shall only allow time to be carried forward to the next retainer period if: the Client is up to date in any payments due to the Company; the Client commits to the renewal of the retainer prior to exceeding the time allowance for the period; the renewal commences immediately following the completion of the period; and the additional hours or days that the Client is going to go over by, do not exceed the full allowance of time for the next period. If the Company agrees to rolling forward of surplus time then the Company shall deduct the overspend of time from the next retainer period. If the Client opts not to renew, or prefers not to carry overspend forward into future retainer periods, the Client agrees that any additional hours shall be treated on the 'pay as you go' basis described in clause 11.4.
- 11.7.Where Commissions are on a 'retainer' basis, if the Client fails to use all of the time allocated within a set invoicing period, the Fee for that period shall still apply and the Company shall not refund the balance. Subject to all sums owing to the Client being paid in full and within the Company's invoicing terms, the Company shall carry forward any unused time under this type of Agreement to be utilised by the Client, provided that the required tasks are broadly comparable to the Services specified in the original Quotation, and provided that any unused time is used within 6-months of the original Commission end date. It is the Client's responsibility to utilize this time and if it is not utilized within 6-months, then the time shall be lost and the Company shall not refund any remaining balance.
- 11.8.For the avoidance of doubt, only unused time may be carried forward. Disbursements and/or expenses costs shall not be offset against future retainer Agreements under any circumstances.
- 11.9.Unless itemised/specified as included in the Quotation, the Company's service Fees shall be exclusive of expenses. Expenses incurred in order to complete the Commission are passed on to Client. The Company shall charge expenses for the items and at the rates outlined in the Company's expenses policy, which the Company is happy to provide to the Client if required. If the Client requires the Company to align with its expenses policy then the Client must agree this with the Company in advance of the Company commencing any work for the Client. If the Client does not do this, the Company's expenses policy shall apply. For the avoidance of doubt, expenses exclude materials and services purchased on behalf of the Client.



- 11.10. Where the Company is required to provide a Quotation for a fixed expenses Fee, the Company shall charge in full for the expenses allowance. Without prejudice to clauses 11.3 to 11.9 above; if the Company exceeds the estimated expenses costs for a fixed expenses Commission then the Company shall absorb any additional expenditure. For the avoidance of doubt, unless the Company specifies explicitly in the Quotation that expenses shall be charged on a fixed basis, all expenses shall be charged in addition to the Fees set out in the Quotation.
- 11.11. When charging a fixed sum to reflect the Company's expenses, the Company shall not supply individual receipts for expenses, and the charge shall be a fixed sum based on a pre-estimate of likely costs incurred. The sum is payable in full regardless of the actual expenses ultimately incurred. If the Company has incorrectly estimated the fixed expense, and the Company exceeds that estimate, provided that the Brief has not changed, the Company shall absorb any overspend. If the Brief is amended, and/or the Commission changes significantly from the description set out in the Quotation, and the Company anticipates that this will likely increase its expenses costs, the Company shall provide the Client with an amended Quotation to include an additional fixed expenses allowance for the Commission. In the event that the Brief is amended beyond the scope of the original Quotation, and the Client does not agree to an additional expenses allowance, the Company may remove the equivalent value of additional expenses incurred, from the time element of the Commission's budget, and in so doing, the Client agrees that this shall not constitute a breach of the Agreement.
- 11.12. Should the Company be required to purchase materials and/or services from third party suppliers on behalf of the Client, this shall be subject to an additional non-refundable 15% handling charge, and shall be charged as soon as the Company incurs the costs. For larger sums, the Company may require the Client to pay the Company for the net cost of the materials in advance before making the purchase. In such circumstances the Company shall agree that with the Client prior to incurring costs. All deliverables produced pursuant to the Commission remain the property of the Company, until paid for in full by the Client.
- 11.13. Where the Company is providing a Quotation on a fixed-fee basis inclusive of all costs, the Company shall absorb any overspend as a result of price increases on materials that may occur in the meantime, provided that: the specification and quantities for the materials/services the Company procures on the Client's behalf match those used to prepare the original Quotation; any industry-wide increase in the net cost of the materials is not excessive; and excluding any incidences where costs have increased due to changes in import or other tariffs and/or exchange rate fluctuations. Any price increase as a result of a change to specification and/or an increase in quantities of materials/services after the Company's Quotation has been accepted shall be met in full by the Client. A change in specification includes the Client specifying after the Company's Quotation has been accepted that the Company must use a particular supplier that is more expensive than others that are available, and also includes any surcharges that are levied by suppliers as a result of changes being made after the Quotations have been accepted, and they have been Commissioned. In the event of a significant market-wide price increase the Company shall agree with the Client whether to proceed, and the additional cost of the Company doing so, or the Company



shall remove this element from the price schedules and refund the Client/reduce the Fees accordingly or agree an alternative use of any budget released as a result.

- 11.14. The Company agrees to exercise reasonable care and attention to quality, and to use reputable suppliers with industry accreditation where relevant, whenever purchasing materials on behalf of the Client, but the Client agrees not to hold the Company liable for any failure or defect in materials purchased on the Client's behalf, after the items have been accepted by the Client. The Company shall pay for deliverables once the Client has accepted them wherever possible, but where the payment terms of suppliers require the Company to pay for them at point of sale/in advance, or where the payment terms of the supplier require the Company to pay them before the Client can accept the deliverables, the Client agrees to pay the Company in full for them regardless of any defects/failures that are discovered. The Company shall pass on any refund it receives for any defects/failures to the Client, without deduction, once any issues are resolved with the supplier. The Client agrees that it shall meet any additional costs that may arise because of failure or defects found at a later date.
- 11.15. When making purchases on behalf of a Client, the Company takes into account quality as well as price when determining value for money, and the Company does not commit to using the lowest cost suppliers. The Company shall consider requests/recommendations by the Client for certain suppliers but the Company reserves the right to refuse to use certain suppliers if the Company determines their quality of product/service does not meet the Company's standards. For the avoidance of doubt, the Company considers a supplier's ethics when determining its quality, which shall include such considerations as whether it sources materials ethically, whether it maintains equal opportunities, and whether it is a responsible employer (this list is not exhaustive). The Company shall be reasonable in such determinations and the Company is happy to discuss this with the Client. In the event that the Company refuses to use a certain supplier and cannot agree on a suitable replacement, the Company shall agree with the Client whether to remove this element from the Commission, so that the Client can procure such services directly, or whether the Company shall allocate the value of the Commission so released for another purpose. In such instances, the Client agrees that this shall not constitute a breach of the Agreement.
- 11.16. Should the Company be required to purchase goods from abroad, if the exchange rate fluctuates between placing an order, and the Company paying for the goods, then the exchange rate in force when payment was made shall be used when charging the Client.
- 11.17. Where the Company has applied a discount to the Fees, whether on a fixed-fee or payment as incurred basis, the discount shall apply only to the Fees set out in the Quotation and/or for the time period specified. Additional work which is beyond the scope of the original Quotation shall be chargeable at the Company's standard rates unless the Company and Client agree otherwise in writing in advance.
- 11.18. Payment(s) shall be made to the Company on receipt of invoices and shall be paid in full within the payment terms, and by the date, stated on the invoice. Payment terms are inclusive of the date on the invoice(s) unless the Company has specifically agreed this with the Client in writing in advance of commencing the Commission. Changes

to the payment terms set out in the Terms and Conditions, during the period of the Commission shall not be accepted.

- 11.19. Fees shall be made payable to the Company in full without deductions for tax, national insurance contributions or similar reasons. The Company confirms that the Company make all relevant payments to HMRC, and that all persons working for the Company are legally entitled to work in the United Kingdom.
- 11.20. Fees shall be payable by BACS, cheque or card payment. The Company's payment details shall be included on all invoices.
- 11.21. The Company shall not accept cyber fraud as a reason for non or late payment of invoices. It is the responsibility of the Client to ensure security of any electronic transactions and to take reasonable steps to protect itself against cyber fraud. If a Client receives any communication that appears to come from the Company, stating that payment details have changed, then the Client must follow this up with a phone call to ensure that the communication is correct, and to make the Company aware that it has received it. This must be done as soon as the Client receives any such communication, and prior to making payment using any new payment details.
- 11.22. The Client may not deduct any transaction fees that it incurs from the Fees.
- 11.23. If there are any queries over invoices and/or the Client has any complaint about the Services, then these must be raised with the person in accordance with clause 3.2 as the Company's lead for this Commission. If no such queries or complaints are received within 14 consecutive days of the date of invoice (inclusive) then the Services shall be deemed to have been satisfactorily delivered, and accepted by the Client, and the invoice(s) shall be paid in full within the stated payment terms.
- 11.24. The Company shall use all reasonable endeavours to deliver to specified timescales, but the Parties agree that the date(s) for provision of the Services shall not be of the essence. The failure of the Company to deliver any aspect of the Commission on the due dates shall not entitle the Client to treat the Agreement as repudiated. Exceptions to this clause may be accepted for specific criteria where there is a clear and significant risk to the Client for a deadline being missed. In the event of such circumstances, any such exceptions must be identified, explained and agreed in writing by both Parties in advance of the commencement of the Commission.
- 11.25. It is the Client's responsibility to determine whether a Purchase Order needs to be issued and to ensure it has provided the Company with the correct Purchase Order number and relevant information for invoicing, which the Company shall display as directed on the invoices.
- 11.26. If the Client issues purchase orders (or equivalent) the Company is content to proceed on the basis of a formal letter (electronic or hard copy) confirming the Commission, and the agreed Fees from the Client prior to a Purchase Order (or equivalent) being raised, but the Client agrees that any work conducted following the issuing of the formal written confirmation by the Client shall be paid for in full without delay. The Client further agrees that if this is not possible, then it shall let the Company know prior to the commencement of any work on the Commission.

- 11.27. The Client agrees that any delays in the delivery of the Agreement that are caused by additional time taken by the Client to raise a Purchase Order or equivalent, and/or to formally confirm the Commission shall not affect the agreed Fees, nor shall this constitute a breach of the Agreement.
- 11.28. Delays in raising Purchase Orders, incorrect details supplied to the Company for invoicing purposes, internal administrative errors in budget code allocations by the Client, delays in completing internal sign-off, and/or late payment to the Client by any funding bodies, or any other internal administrative issues experienced by the Client are not accepted as a reason for late payment of the invoices.
- 11.29. Failure by the Client to pay any Fees by the due date, as shown on the relevant invoice(s), is deemed a breach of the Agreement and shall entitle the Company to immediately cease work for the Client and to:
- 11.29.1. cancel the balance (if any) of the Agreement under which the Client has failed to pay, and to recover from the Client damages for any loss suffered by the Company as a result of such cancellations and/ or;
  - 11.29.2. cancel any other Agreement or the balance of any other Agreement which the Company may have with the Client and to recover any loss suffered by the Company as a result of such cancellations and/ or;
  - 11.29.3. charge interest at the rate for the time being applicable under the Late Payment of Commercial Debts (Interest) Act 1998 (or subsequent revisions thereof) in the case of overdue accounts.
- 11.30. VAT is charged on top of all Fees at the current rate and does not form part of the fixed-fee element of the Quotation. Should the VAT rate fluctuate during the progress of the Commission, the Company shall charge VAT at the new rate in force. It is the Client's responsibility to ensure that it can meet any additional costs as a result of a rise in VAT.
- 11.31. If the Client fails to make a payment due to the Company under the Agreement by the due date, then, without limiting the Company's other remedies under Clause 11, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.31 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

## **12. NON-SOLICITATION**

- 12.1. During the Agreement, and for six months after its expiry or termination, neither Party shall solicit or entice (either directly or indirectly) or attempt to solicit or entice (or authorise the taking of such action by any other person) any person who is employed by either Party, or that has been employed by either Party during the

preceding six months and who has been involved with the Services provided under the Agreement, to terminate his or her employment with the other Party. For the avoidance of doubt, placing an advertisement in the press is not considered to be an attempt to solicit or entice any employee, and nothing in this clause shall prevent any employee from choosing to apply for such a position of their volition.

- 12.2. Should the Company consent to any employee joining the Client in the circumstances detailed in clause 12.1, the Company may charge a Fee in consideration for such consent equivalent to one-fifth of the annual salary to be paid by the Client to that employee. This shall be payable by the Client immediately upon presentation of an invoice by the Company.

## 13. TERMINATION AND VARIATION

- 13.1. Either Party may immediately terminate the Agreement in writing in the event that either Party:

13.1.1. is in material breach of these Terms and Conditions, provided that such breach has been notified as such to the other Party in writing, that any notice is issued within 7 days of the notifying Party becoming aware of the breach, and on that basis that both Parties shall allow the other no less than 30 days from the point of receipt of notification to remedy the breach;

13.1.2. becomes insolvent;

13.1.3. enters into liquidation (whether voluntary or compulsory);

13.1.4. passes a resolution for its winding up;

13.1.5. appoints a receiver or administrator for the whole or any part of its assets;

13.1.6. makes any composition or arrangement with its creditors, or takes or suffers any similar action in consequence of debt; and/or

13.1.7. ceases or threatens to cease the continuation of its business.

- 13.2. In the event of termination of the Agreement for whatever reason the Client shall be responsible for all Fees and expenses due to the Company for work conducted, up to, and including the date of termination. For fixed-fee Agreements, this shall be subject to the maximum Fees in the Quotations, or any subsequent variation of the Quotations, that has been agreed between the Parties prior to notice of termination. For the avoidance of doubt, in the event of termination, payment must be made for any expenses, materials, deliverables, and service costs incurred or committed to by the Company as part of the delivery of the Commission, up to, and including, the effective date of the termination, including for any items ordered but not yet paid for that cannot be cancelled/refunded – this includes any additional cancellation charges that the Company is required to pay third parties upon termination. The Company shall use reasonable endeavours to secure refunds on any materials purchased, and the Company shall pass on any refunds, when they are received by

the Company, to the Client, but the Company does not guarantee that this is possible, nor shall a Client hold the Company liable for this.

- 13.3. Any notice of termination or of a material breach must be given in writing, and shall be deemed to have been served 48 hours after the date of the postmark if sent first class, or 72 hours after the date of postmark if sent second class. Cancellation or notification of a material breach via electronic mail is not accepted.
- 13.4. Variation of the Agreement shall be by mutual written consent, which may be done by electronic means.
- 13.5. No liability is accepted by the Company for lost post. It is the responsibility of the Client to ensure that any notices issued carry the correct postage, and that they have been received by the Company.
- 13.6. The Company acknowledges that the Client's strategy or marketing programme may be influenced by changes or matters affecting the Client's own market and sector, and any request by the Client to amend or halt any plans, or to cancel work in progress, shall be implemented by the Company insofar as this is possible within the terms of its contractual agreement with any third party suppliers. Where the Commission is on a fixed-fee basis, or where there are fixed-fee elements of any Commission, the Fee shall remain unchanged, but the Client may utilise any resources so freed up for other purposes that are within the Company's stated range of Services, which shall be determined from the list of advertised Services on the Company's website at the time of any change. Any such change must be agreed between the Parties and confirmed in writing as a variation of the Agreement before it takes effect.
- 13.7. In the event of termination of the Agreement, the Client shall immediately return all property owned by the Company, or deliverables that have not been paid for in full. If the Client fails to do so, then the Company may enter the Client's premises and take possession of it. Until any such property has been returned, the Client shall be solely responsible for its safe keeping and will not use any items for any purpose not connected with the Agreement.
- 13.8. The following clauses shall survive the expiry and/or termination of the Agreement howsoever arising, unless a specific sub-clause is stated below then the entirety of the clauses noted shall survive the expiry and/or termination of the Agreement: clauses 1, 3.6, 4, 5, 6, 7, 8.8, 8.9, 8.10, 9.5, 12, 13, 13.8, 14, 15, 16, 17 and 19.

## 14. WAIVER

A waiver by either Party of any Terms or Conditions of the Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach of it, nor shall any failure, neglect or delay to enforce any of the provisions of these Terms and Conditions be deemed to be a waiver of the Company's rights hereunder or at law, and shall not prejudice, affect or restrict the Company's right to take subsequent action.

## 15. AMENDMENT

- 15.1. The Company may update these Terms and Conditions and therefore the Agreement from time to time to reflect the changing nature of its business. If this occurs during a Commission, the Company shall notify the Client of any changes that have been made that affect the Client in advance of them taking effect. In the event that a change to any item cannot be agreed, the original wording shall remain in effect for the duration of the Commission. In any event, any amendment to a single term shall not affect the remainder of the Agreement. Regardless of whether changes made during a Commission are agreed or not, any future Commissions shall be based on the Terms and Conditions in force at the time of the Company providing further Quotations. Where the Commission is on a membership or retainer basis without a set end date, the revised Terms and Conditions shall come into force at the point of membership renewal and/or the next break point in the retainer. The only exception to this clause shall be amendments that the Company is required to make as a result of a change in law. Any such changes shall take effect as soon as they are made or as soon as the law change comes into effect, whichever is soonest.
- 15.2. Any changes the Company makes to the Terms and Conditions between submitting a Quotation, and formally commencing work for the Client shall have no bearing on the Quotation, but the Terms and Conditions that shall take effect upon Commission shall be those in place at the point the Company formally commences work for the Client, usually through the issuing of a Purchase Order and/or formal commissioning letter (or equivalent) being issued by the Client. Any amendment to the Terms and Conditions to suit the Client's requirements that are made after the Company issued the Quotation (including any that fall between the issuing of the Quotation and the commencement of work) may require the Company to revise the Quotation unless the requirements were clearly specified in the original Brief. Any delays as a result of time taken to agree amended Terms and Conditions to meet the Client's requirements and to agree any related changes to the Fees as a direct result, shall not constitute a breach of the Agreement.

## 16. ASSIGNMENT

The Client may not assign, sub-license, or sub-contract the Agreement or any of its rights or obligations without the prior written consent of the Company.

## 17. ENTIRE AGREEMENT

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.

## 18. SEVERANCE

If any provisions of these Terms and Conditions are declared by any judicial or other competent authority to be illegal, void, voidable or otherwise unenforceable, or indication of

the same is received by either Party from any relevant competent authority, such provision shall be deemed to be severed but the remaining terms shall remain in full force and effect.

## 19. NOTICES

19.1.1. Any notice or other communication given to a Party under or in connection with the Agreement 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, or sent by email to its main correspondence e-mail address.

19.1.2. Any notice or communication shall be deemed to have been received:

19.1.2.1. if delivered by hand, at the time the notice is left at the proper address;

19.1.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or

19.1.2.3. if sent by e-mail at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 19.1.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

19.1.3. This clause 19 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 20. THIRD PARTY RIGHTS

Unless it expressly states otherwise, any Agreement concluded upon these Terms and Conditions shall not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999, to enforce any term of the Agreement.

## 21. LAW AND JURISDICTION

These Terms and Conditions, and all Agreements based upon them, shall be governed by and construed in accordance with English and Welsh law, and the Parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.