

# 56 Degree Insight Ltd Standard Terms and Conditions of Business

## 1. Definitions

In these terms and conditions (the "**Conditions**") the following definitions are used:

"**Ad-hoc Service**" means the bespoke market research services provided by Company (i.e. either one-off bespoke services or bespoke continuous tracking services).

"**Company**" means 56 Degree Insight Limited (company number 618625) a company registered in Scotland, whose registered office is at 32/8 Hardengreen Business Park, Eskbank, EH22 3NX

"**Client**" means the person appointing the Company to provide the Services as set out in the Contract.

"**Confidential Information**" means all information, data or material of a confidential, commercially sensitive or proprietary nature in any form, which either party, discloses to the other pursuant to this Contract (including the Proposal, the Statement of Work and anything the receiving party creates which is derived from or based upon the information, data or materials disclosed to it by the disclosing party).

"**Continuous Service(s)**" means bespoke continuous or tracking market research services which are not Ad-hoc provided by the Company.

"**Contract**" means the contract between the Company and the Client consisting of the Proposal and these Conditions, together with the Statement of Work and Purchase Order (where used). In the event of any inconsistency between the documents comprising the Contract, this shall be resolved according to the following numbered order of priority: (i) the Statement of Work (where used); (ii) these Conditions; (iii) the Proposal; and (iv) the Purchase Order.

"**Deliverable(s)**" means such survey results, reports, data, summaries, comments, discussion and/or analysis as are named as such in the Statement of Work, created for and provided by the Company on an exclusive basis to the Client when implementing the Proposal in the course of providing the Services.

"**Fee**" means the fee(s) to be charged by the Company for the provision of the Services to the Client set out in the Proposal.

"**Intellectual Property Rights**" means patents, trademarks, service marks, trade names, registered and unregistered designs, trade or business names, copyright, database rights, design rights, rights in confidential information and any other intellectual property rights whatsoever irrespective of whether such intellectual property rights have been registered or not which may subsist in any part of the world.

"**Primary Records**" means all records, materials and information obtained by verbal interviewing techniques, postal and other self-completion questionnaires, mechanical or electronic equipment, observation and any other method where the identity of the provider of the information may be recorded or otherwise traced and all similar records.

"**Proposal**" means the written final proposal and/or quotation for the provision of the Services issued by the Company to the Client. Where a Statement of Work is issued by the Company, this shall supersede the Proposal.

"**Purchase Order**" means the purchase order or equivalent official document issued by Client which meets all applicable Client procedures and policies for authorising expenditure and paying invoices to the extent required by the Contract.

"**Secondary Records**" means all data, tables, records and information from which the provider of the information is not traceable comprising the analysis of the Primary Records but not forming part of the Deliverables unless named as such in the SOW.

"**Services**" means the Ad-hoc Service and/or Continuous/Syndicated Service (as the case may be) to be performed by the Company for the Client as set out in the Proposal.

"**Statement of Work**" or "**SOW**" means the written form of acceptance for the provision of the Services in accordance with the Proposal to which these Conditions are attached, to be approved and returned to the Company by an authorised signatory of the Client. This approval can be in the form of an email.

"**Third Party Software**" means commercially available off-the-shelf software developed by persons other than the Company, which may be required for the purpose of accessing or using the Deliverables, including, by way of example only, Microsoft Excel and SPSS.

## **2. Research Standards**

- 2.1 All research projects conducted by the Company shall be undertaken in compliance with the Market Research Society (MRS) Code of Conduct, which includes the requirements of the Data Protection Act 1998, and the ICC/ESOMAR International Code of Marketing and Social Research practice.
- 2.2 The Client shall make available such information as is requested by the Company to ensure compliance and the Client warrants and agrees to be responsible for the accuracy of any information and for any instructions supplied by or on behalf of the Client.
- 2.3 The Company's Quality Management System requires independent review of the design aspect of the Company's Proposal/Quotation by the Client. Acceptance of the Proposal is deemed to be evidence of this review being satisfactorily completed.

## **3. Acceptance of Proposal / Statement of Work**

- 3.1 The Proposal (including the Fee set out in the Proposal) shall be valid for acceptance by the Client for a period of two (2) calendar months from the date that the Proposal is issued. The Company shall agree with the Client whether a Statement of Work or Purchase Order or both are required to form a Contract in respect of the Services prior to the commencement of Services and the following provisions will apply accordingly.
- 3.2 The Client shall be deemed to have accepted the Proposal or the Statement of Work (as applicable) and a Contract shall be formed by the Client either: (i) notifying the Company in writing (which may be by email) that it has accepted the Proposal or the Statement of Work (as applicable); or (ii) otherwise notifying the Company in writing (which may be by email) that it wishes the Company to commence provision of the Services (including, without limitation, by issuing a Purchase Order in respect of the Services or any part thereof). For the avoidance of doubt, where the Client must, to comply with its own procedures, issue a Purchase Order and fails to do so, the Client understands and accepts that the Company shall not be obliged to commence the Services nor supply any Deliverables until the Purchase Order has been received by the Company. In these circumstances the Company may at its sole and absolute discretion commence the planning and project management of the Services but will not commission field work or any third party costs, and all time scales for delivery will be revised accordingly. All Client Purchase Orders must include or reference the agreed final version of the Proposal where no Statement of Work is used.
- 3.3 If the Client has not accepted the Proposal within two (2) calendar months then the Proposal (including the Company's Fee quotation set out in the Proposal) will expire, unless an authorised representative of the Company has agreed to extend this validity period in advance in writing. The Company reserves the right to amend or withdraw the Proposal (including the Fee quotation set out in the Proposal) at any time until it is formally accepted by the Client.
- 3.4 The Company shall not be required to commence provision of the Services until it has received acceptance of the Proposal or Statement of Work (as applicable) as set out above.

## **4. The Fee**

- 4.1 The Fee is quoted in the Proposal exclusive of Value Added Tax (VAT) (or any other equivalent sales tax). Where required by law, VAT (or any other equivalent sales tax) will be chargeable in addition to the Fee.
- 4.2 The Company shall be entitled to recover reasonable expenses incurred pursuant to the provision of the Services subject to copy receipts being retained by the Company (and provided to Client upon written request) unless such expenses have been expressly stated in the Contract as being included in the Fee.
- 4.3 If the Fee has been based upon information provided by the Client which is subsequently shown to be incomplete or incorrect, the Company shall be entitled to increase the Fee to take account of any resulting additional time involved in providing the Services (or additional services) and any necessary additional costs incurred by the Company.
- 4.4 The Client further acknowledges that any extension of usage of any Deliverable beyond that originally notified to the Company and anticipated by the Proposal may incur additional fees and/or costs which will be agreed in writing between the Company and the Client prior to such extended usage.
- 4.5 Unless expressly stated otherwise in the Proposal, the Fee is proposed and payable in UK sterling. For projects involving currencies other than sterling, the Fee quoted in the Proposal (or Statement of Work if applicable) will be calculated based on an indicative exchange rate. This fee is subject to change due to exchange rate movements prior to the formation of the Contract at which time the Company normally obtains forward cover. Should delay on the part of the Client or other factors outside the Company's control affect this procedure and involve the Company incurring additional costs not envisaged at the time of formation of the Contract, the Company reserves the right to pass on the extra costs to the Client. Where the Client is late in paying any sums due to the Company hereunder and such late

payment results in the Company incurring additional costs due to exchange rate movements, then the Company reserves the right to pass on these costs to the Client. Any extra costs referred to above shall be confirmed by the Company to the Client from time to time in writing.

- 4.6 The Fee quoted in the Proposal assumes that payments to the Company will be made free and clear of and without deduction of withholding tax levied in any country from which payment is made. Should any such tax arise which in the Company's reasonable opinion cannot be readily recovered within a reasonable time scale, then the Company shall be entitled to increase the Fee to the extent necessary that after the payment of any required tax, the Company receives and retains a net amount equal to the agreed Fee.
- 4.7 The Company reserves the right to charge for additional unforeseen costs incurred as a result of statutory amendments to rates of pay, taxes or duties or any other circumstances outside the control of the Company, including but not limited thereto, war, civil disturbances, strikes or capricious behaviour of the authorities. Furthermore, if at any time the Client requests that any aspect of the project set out in the Proposal (including timing) be changed, the Company reserves the right to adjust the Fee accordingly. The Company shall give the Client written notice of the revised Fee, and if such increase exceeds 10% of the previous agreed Fee the Client shall, providing that it does so within 7 days of receipt of notification of the revised Fee, be entitled to serve immediate notice of termination of the project. However, in such an event the Client shall be liable to pay the Company that part of the Fee that relates to all work undertaken, and for any non-cancellable third party costs incurred and/or committed to by the Company up to the date of termination.

## **5. Terms of Payment**

- 5.1 For Continuous Services payment of the basic annual Fees will be made in quarterly instalments in advance, commencing on the date on which the Proposal is accepted in accordance with Clause 3 and quarterly at the beginning of each quarter thereafter.
- 5.2 For Ad-hoc Services payment of the fees shall, unless otherwise agreed in writing by an authorised representative of the Company, be as follows. The Company shall invoice the Client fifty per cent (50%) of the Fee on commissioning, twenty per cent (20%) of the Fee on commencement of field work and thirty per cent (30%) on completion (that is, unless otherwise agreed, on delivery of final report).
- 5.3 The Client shall make payment to the Company within 30 days of the date of the relevant invoice. All sums payable to the Company under this Contract shall be paid without any set-off whatsoever.
- 5.4 Invoices shall be paid in the currency in which they are issued. Any applicable VAT (or equivalent sales tax) will be added to all invoices.

## **6. Postponement, Suspension or Delay**

- 6.1 Once the Client has accepted a Proposal and Fee and a Contract has been formed in accordance with Clause 3, the Services will be provided by the Company for the duration of the project as set out in the Proposal (or Statement of Work, where used) and the Client may not normally then postpone or suspend any element of the Services to which that Contract relates other than in accordance with these Conditions. In the event of a material business event or circumstance(s) arising leading to a genuine request by the Client to postpone or suspend any element of the Services to which that Contract relates, the Client shall immediately notify the Company and the Company shall, subject to the provisions of this Clause 6, cease activity in relation to that project.
- 6.2 In the event of a postponement or suspension, the Client shall pay all costs incurred and/or committed to by the Company up to the point of such postponement or suspension and any additional costs occasioned by the postponement or suspension and associated rearrangement of the Services.
- 6.3 In the event that the Company's performance of the Services is prevented or delayed by any act or default of the Client (including without limitation a delay in supplying a Purchase Order in accordance with clause 3.3), or any employee, agent or contractor employed or engaged by or on behalf of the Client (not being the Company), and the Company as a result spends additional time and/or costs in providing the Services or suffers any loss, then the Client shall make payment to the Company for the said additional costs and/or compensate the Company for any loss so incurred, in addition to the agreed Fee. Further, the Company shall be entitled to amend the programme for the performance of the Services and delivery of any Deliverables

## 7. Term and Termination

- 7.1 The duration of the Contract shall be specified in the Proposal (or Statement of Work, where used).
- 7.2 Either party (the "**Complaining Party**") may terminate this Contract by giving written notice to the other party (the "**Defaulting Party**") if any of the following events occurs:
- 7.2.1 The Defaulting Party commits any material breach of any of the provisions of this Contract and either: (i) the breach is not capable of remedy or (ii) if the breach is capable of remedy, the Defaulting Party fails to remedy it within 45 days after receiving a written notice from the Complaining Party containing full particulars of the material breach and requiring it to be remedied; or
- 7.2.2 The Defaulting Party (which term shall include the holding company or ultimate parent company of the Defaulting Party) becomes bankrupt or goes into liquidation (whether voluntary or compulsory), is dissolved, compounds with its creditors or has a receiver, administrative receiver or administrator appointed over the whole or any part of its assets or a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administrative order, the winding-up, bankruptcy or dissolution of the Defaulting Party or the Defaulting Party suffers any similar process under the law of its domicile or place of its jurisdiction.
- 7.3 Either party may terminate this Contract for convenience by giving the other party: (i) three (3) months' prior written notice in respect of Ad-Hoc Services; and (ii) 6 (six) months' prior written notice in respect of Continuous Services and Syndicated Services. In addition, in respect of Syndicated Services, the Company shall be entitled to terminate such Services on 1 month's prior written notice where, in the Company's reasonable opinion, the continued provision of such Services to the Client is not commercially viable (for example, where the number of subscribers to such Services falls below an acceptable level).
- 7.4 Unless otherwise agreed by the Company, in the event of a termination of the Contract for convenience by the Client pursuant to Clause 7.3, the Client shall pay the Company a termination fee of 50% of the total Fee stated in the Contract (being the proportion of the Fee to which the Company is normally committed upon commissioning)(the "**Termination Fee**") plus the difference (if any) between the Termination Fee and all additional costs incurred or committed to by the Company up to the point of termination including those set up and other costs based on the Contract running its full term.
- 7.5 Upon termination of this Contract, unless otherwise agreed by the Company, all invoices which have already been submitted by the Company will become payable and refunds for payments made which exceed the Termination Fee shall be at the Company's sole, reasonable discretion. Where the Contract has been terminated by the Company pursuant to Clause 7.3, the Company shall liaise with the Client regarding the orderly handover of the Services to the Client or a replacement provider, as the case may be.

## 8. Product and Other Test Materials

- 8.1 Where products, samples or test materials are provided by the Client to the Company for use in connection with the Services, the Client warrants that any content, packaging or labelling shall comply with all relevant laws in all relevant territories and agrees that the Client shall be solely liable for and shall fully indemnify the Company against any damage, loss, liability, claim, proceeding, expense, injury, or inconvenience caused by the use of such products, samples or materials (whether to the Company or any third party) or from any allegation that they infringe any intellectual property or other rights of any third party or from any of them being defective. If required by the Company, the Client shall produce evidence of sufficient product liability or other indemnity insurance as determined by the Company.
- 8.2 If the Client wishes the Company to represent it in respect of dealing with any complaint regarding any products, samples or other materials used in the research project, this shall only be with the prior agreement of the Company (which may be withdrawn at any time) and at the cost of the Client.
- 8.3 The Client agrees that when it appoints the Company to provide Services which relate to a new or revised product or service of the Client, the Company shall not under any circumstances be responsible for the loss of any patent protection arising as a result of the performance by the Company of such Services.
- 8.4 The Company shall not be liable in any circumstances for the loss of or damage to any such products, samples or test materials, once they have been supplied to respondents and will be entitled to confidentially destroy any remaining physical products, samples or test materials supplied by the Client upon completion of the Services unless otherwise agreed in the Contract.

## **9. Accuracy of Deliverables**

- 9.1 The Company shall provide the Services with reasonable skill and care in accordance with the specification contained in the Proposal and the Deliverables shall be the result of careful analysis of respondent data and shall have been subject to thorough checks by or on behalf of the Company in accordance with its quality control policies.
- 9.2 The Client acknowledges and accepts that (i) the response rates to surveys/questionnaires cannot be predicted and are not guaranteed by the Company, (ii) all figures contained in Deliverables will be estimates derived from sample surveys and subject to the limits of statistical errors/rounding up or down; (iii) unless otherwise stated in the Contract, data collection sample achievement both at a total level and within quota will be within a margin of +/- five percent (5%) of the numbers stated and (iv) translating a Deliverable from the controlled test environment to the real market place, it is possible that some of the assumptions on which a Deliverable is based will not remain constant and any subsequent change in market conditions or to the test product itself, could impact on the initial performance predictions including possible invalidation of the Deliverable(s) in question.
- 9.3 Except as expressly set out in these Conditions, the Company disclaims all other warranties, conditions and guarantees relating to the Services and/or Deliverables either express or implied, including, without limitation, warranties for merchantability and fitness for a particular purpose.

## **10. Delivery**

- 10.1 The Company will use all reasonable endeavours to provide the Services, and to deliver any Deliverables, in accordance with the estimated timings set out in the applicable Proposal. However, the Company shall not be liable for any failure to adhere to the quoted timings or for any loss or damage suffered by the Client resulting from any delay caused directly or indirectly by any act or omission by the Client and/or by any third party for whom the Company is not contractually responsible hereunder. The parties agree that time shall not be of the essence as regards this Contract. For the avoidance of doubt, where the Client must to comply with its own procedures issue a Purchase Order and fails to do so, the Client understands and accepts that the Company shall not be obliged to supply any Deliverables until a Contract has been formed and, where applicable, the Purchase Order has been received by the Company.
- 10.2 Where the Company agrees to supply a Deliverable to the Client in electronic format, both parties shall use their best endeavours to comply with any security specifications which may be issued by the Company to the Client from time to time.
- 10.3 The Client shall ensure that a single authorised person, or where required a single authorised person per region or territory, shall take responsibility for co-ordinating on behalf of the Client all matters relating to the Company distribution of data electronically. Such Client contact shall be responsible for matters including the distribution of user identities, restricted use of passwords and other security issues. The Client shall ensure that use of any password allocated by the Company is strictly limited. The Company reserves the right to withdraw the use of any password in the event that it considers there may have been, or is likely to be, a breach in security or other valid commercial reason.
- 10.4 Full methodological details, where not included in the main Deliverables, will be available on request.

## **11. Approvals**

- 11.1 The Client shall be responsible for fully and promptly complying with all requests for information or approval to assist the Company in complying with any required timescale.
- 11.2 The Client and the Company agree that for the purposes of the Contract, a signature of an authorised signatory on behalf of the Client on materials submitted for approval shall be construed as written approval of that material and messages sent by facsimile or electronic mail will constitute valid written approval. The Client acknowledges that circumstances may arise where the Company must act on the basis of verbal authority and accepts that it may do so where authority cannot reasonably be provided in written form.
- 11.3 Where the Company provides a contact report confirming a verbal discussion with the Client, it is imperative that any disagreement on matters covered is notified to the Company immediately. If no disagreements are raised within 4 days of the date of the issue of the contact report it shall be deemed to be confirmed as accurate.

## **12. Data Ownership and Storage**

- 12.1 Completed questionnaires, audio and visual tapes and computer records prepared by or on behalf of the Company during the course of providing the Services shall remain the property of the Company unless otherwise agreed in the SOW.
- 12.2 The Client may, on request and at its own expense, be supplied with copies of the survey records which have been used to prepare a Deliverable, subject to the requirements of the MRS Code of Conduct and the Data Protection Act 1998 to respect the anonymity of respondents. For the avoidance of doubt, the Company shall not be required to provide copies of survey records to the Client if, in the Company's sole opinion, to do so would be in breach of the MRS Code of Conduct and/or applicable data protection laws and regulations. The Client warrants that it shall store and use any survey records provided by the Company strictly in compliance with all applicable data protection laws and regulations and that it shall fully indemnify the Company against any and all claims relating to its breach of the same.
- 12.3 The Primary Records shall at all times remain the property of the Company, who shall be entitled to destroy them, without reference to the Client on the earlier of twelve (12) months after the submission of the Deliverables or twelve (12) months after completion of the Services set out in the Proposal (for a Continuous/Syndicated Service this will be 12 months after completion of each fieldwork period) with the sole exception of Qualitative recruitment screening questionnaires which will be retained for three (3) months. Title in the Secondary Records remains at all times the property of the Company unless named as Deliverables or otherwise agreed in the SOW. The Company shall be entitled to destroy them, without reference to the Client, two (2) years after the submission of the Deliverables or two (2) years after completion of the Services set out in the Proposal.

## **13. Confidentiality and Public Statements**

- 13.1 Both parties agree at all times to treat as private and confidential all Confidential Information of the other party. Neither party shall disclose to any third party or use for any other purposes any such information of the other party without the prior written consent of the other party, other than the disclosure by the Company to its approved third party vendors, agencies or fieldworkers of such Client information (whether Confidential Information or not) as is reasonably necessary in preparing the Proposal or performing the Services. The obligations set out in this clause shall not apply to any information or materials which are in the public domain other than as a result of any breach by either party of its obligations under the contract, nor to any information which was known to the disclosing party prior to its disclosure, nor to any information which is required to be disclosed by law or in compliance with the requirements of a competent regulatory authority.
- 13.2 Without limiting the generality of Clause 13.1 above, Proposals issued by the Company contain confidential information about the Company and the Client shall keep secret and not disclose the content of any Proposal or any information or ideas, in whatever form, disclosed during or in connection with any pitching or briefing process, to any third party or otherwise make use of or derive other material from it, without the prior written consent of the Company or use any Proposal other than for the purposes of considering its contents with a view to appointing the Company to provide the Services set out therein.
- 13.3 The Deliverables provided by the Company are normally only for the Client's internal use. The Client undertakes to inform the Company of any intended wider publication of any Deliverable or any results (whether wholly or in part and whether on its own account or any third party) supplied by the Company prior to release.
- 13.4 Unless explicitly specified otherwise in the Contract, the Company's name may not be quoted in connection with the Services until the exact form of such communication (including the form of any acknowledgement of the Company) has been agreed with the Company. Neither the Deliverables nor any findings or extracts from or summaries of it may be published or used in any publicity or marketing material or advertising without the Company's prior written approval (not to be unreasonably withheld). Without prejudice to the generality of the foregoing, the Client agrees that it shall not (and shall procure that any third party to whom the Deliverables are supplied in accordance with the Contract shall not) disclose the Deliverables publicly in any manner that is likely to harm the Company's reputation or business. In particular, the Client agrees not to (and shall procure that any third party to whom the Deliverables are supplied in accordance with the Contract shall not) use the Deliverables in any manner that could or does exaggerate, distort or misrepresent the findings and/or data supplied by the Company.
- 13.5 Each party shall be entitled to list the other as its service provider or client in marketing/promotional material. Except for this right neither party shall have any right to use the other party's name, trade mark, logo, or slogans without the prior written consent of that party.

## **14. Intellectual Property Rights**

- 14.1 The Intellectual Property Rights in any Proposal issued by the Company is and shall remain the exclusive property of the Company.
- 14.2 The Primary Records and, unless they are named as Deliverables or otherwise agreed in the SOW, the Secondary Records shall at all times remain the property of the Company. Subject to Clauses 14.4 and 14.5, for Ad-hoc and Continuous Services the Intellectual Property Rights in each Deliverable shall vest in the Client upon payment of all Fees due to the Company in respect of such Deliverable.
- 14.3 It is agreed that the Company shall be entitled, both during and after the termination or expiry of this Contract, to use all Deliverables and other findings and records resulting from the Services for its own internal purposes, as part of its own databases and for purposes connected with its business, including in connection with any relevant legal dispute.
- 14.4 Notwithstanding Clauses 14.1 to 14.3 above, at all times all rights, including all Intellectual Property Rights, of whatsoever nature in and to any techniques, principles and formats and in all proprietary materials, software, programs, macros, algorithms, modules, methodologies and anything else used by or created by the Company in putting together a Proposal or carrying out the Services which are of a generic nature or otherwise not produced exclusively for the Client ("**Background Intellectual Property Rights**") shall at all times remain the exclusive property of the Company. The Client shall be granted a non-exclusive, non-transferable, perpetual, worldwide licence to use the Secondary Records (if and to the extent that they are included in the Deliverables) and the Company's Background Intellectual Property Rights but solely to the extent required to use the Deliverables in accordance with this Contract. Where the Company develops additional modules for use with the Company's existing software and/or systems during the course of providing the Services (including Ad-hoc Services), all rights, including all Intellectual Property Rights, shall vest in and remain vested in the Company. Where the Company develops additional modules for use with the Client's software and/or systems, the Company shall have the right to use such modules in future projects and/or services it may provide to its clients.
- 14.6 Where software is to be provided by the Company as part of the Services, the Client acknowledges that its use of such software may be subject to separate licence terms. For the avoidance of doubt, the Client shall be responsible for ensuring that it is appropriately licensed to use any Third Party Software required to access or otherwise use the Deliverables. Unless expressly agreed between the parties, the Company shall not be required to procure the grant of any licence of Third Party Software to the Client as part of the Services.
- 14.7 Where the Client provides the Company with data and/or materials in connection with the Services, such data and/or materials shall remain the exclusive property of the Client but the Company shall be granted a non-exclusive, non-transferable, perpetual, worldwide licence to use such data and/or materials for the purposes of providing the Services in accordance with this Contract.

## **15. Limitation of Liability**

- 15.1 No party excludes or limits its liability under this Contract for death or personal injury caused by its negligence, fraudulent misrepresentation or any other type of liability which cannot by law be excluded or limited.
- 15.2 Subject to Clause 15.1, neither party shall be liable for loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings, loss of data or use of data, or consequential, special or indirect loss or damage even if such party has been advised of the possibility of such loss or damage.
- 15.3 Subject to Clauses 15.1 and 15.2, the Company's total liability for all claims under or in connection with this Contract for loss or damage not otherwise excluded shall not in aggregate exceed the amounts paid by Client to the Company under this Contract.
- 15.4 If conclusions and/or recommendations are required of the Company as part of the Services, such conclusions and/or recommendations are solely and exclusively an opinion of the Company and are based on variable assumptions used in the field of market research and forecasting and based on a controlled test environment. Whilst they are the result of careful analysis and thorough work procedures, they constitute a single factor among many to be taken into account by the Client. The results of qualitative research cannot be projected onto the overall population due to sample selection, interviewing methods and sample size. In no event (other than in the case of the Company's proven wilful or gross negligence) shall the Company be liable to the Client for any loss or damage whatsoever with respect to any conclusions or recommendations made by the Company in relation to the Services and contained in the Deliverables or to reliance thereupon by the Client. The Client hereby acknowledges that it shall be solely responsible for the consequences of any action taken by it based on the Deliverables or pursuant to its interpretation of the Deliverables.

## **16. Non-Solicitation**

- 16.1 The Client and the Company covenant with each other that they shall not, either on their own account or for any other person, firm or company, directly or indirectly solicit, interfere with or endeavour to entice away from the other, any senior director, employee or consultant of the other (whether or not such person would be in breach of his contract of employment or engagement by reason of leaving the service of the party concerned) nor shall either party knowingly employ, aid or assist in or procure the employment by any other person, firm or company of such person during the Contract and for a period of 12 months thereafter.

## **17. Data Protection**

- 17.1 Where in connection with this Contract one party (the "**Data Processor**") is Processing Personal Data of which the other party is the Data Controller ("**Data Controller**") the Data Processor shall: (i) process such Personal Data only for the purposes of providing and/or receiving the Services (as the case may be); (ii) comply at all times with the provisions of the Data Protection Act 1998 and in particular the Seventh Principle as if it were the Data Controller; (iii) only Process Personal Data on behalf of the Data Controller in accordance with the Data Controller's instructions; (iv) answer the Data Controller's reasonable enquires to enable the Data Controller to monitor the Data Processor's compliance with this clause; (v) permit the Data Controller at its own expense, no more than once in any calendar year, during normal working hours and on no less than ten business days' notice to have such escorted access as the Data Processor at its sole discretion may agree to the appropriate part of the premises, systems, equipment, and other materials and facilities where the Data Processor Processes the Personal Data, provided that a) the scope and timing of, and personnel involved in, such access is agreed between the Parties in advance; b) Data Controller personnel granted such access shall complete such confidentiality undertakings as the Data Processor requires, c) no access shall be granted at any time to the Data Processor's servers, and (d) the Data Controller shall not copy or remove any material or Personal Data; and vi) not pass any Data Controller material or Personal Data to a third party (other than an authorised sub-contractor under this Contract) without prior consent. In this clause, the terms "**Personal Data**", "**Process**", "**Processing**" and "**Data Controller**" shall have the meanings given to them in the Data Protection Act 1998.

## **18. Freedom of Information Act 2000**

- 18.1 The Client must notify the Company immediately in writing in the event that it is or if it becomes a "public authority" for the purposes of the Freedom of Information Act 2000 (or any replacement of the same from time to time or equivalent legislation applicable in territories outside of the UK) (the "**FOIA**").
- 18.2 If applicable, in the event that the Client receives a request for public disclosure under the FOIA of any information relating to the Company, the Services, the Deliverables or this Contract, the Client shall promptly notify the Company in writing (enclosing a copy of the public disclosure request) so that the Company can work with the Client in honouring its obligations under the FOIA whilst at the same time, having due regard to the confidentiality of the Company's confidential and commercially sensitive information.
- 18.3 The Client shall return all confidential information (including, without limitation, all copies thereof) disclosed by the Company for the purposes of entering into this Contract and carrying out the Services as soon as reasonably practicable after all Deliverables have been provided.
- 18.4 The Company shall use reasonable endeavours at all times to assist Client with FOIA requests and the Government's Transparency Agenda. In fulfilling its obligations under FOIA, the Client accepts and agrees that the Company's Proposals are copyrighted and are, together with the Contract, to be held in strict commercial confidence at all times. The Client understands that any release of the Proposal or Contract would harm the Company's commercial and competitive interests and undertakes (and undertakes to procure such an undertaking from any third party to whom the proposal or Contract might be released in accordance with the Contract) at all times to use all reasonable endeavours to agree the content and such redaction as the Company may reasonably require of any release of the Proposal or Contract (or any extract thereof) with the Company prior to release.

## **19. Notices**

- 19.1 All notices to be given by either party to the other shall be in writing and addressed to the receiving party at that party's last known address. Service may be deemed to be delivered immediately by personal delivery or secure corporate electronic mail. Postal service shall be deemed delivered 48 hours after posting by recorded delivery mail.



Service by e-mail and facsimile shall be deemed to be delivered simultaneously with transmission subject to production of confirmation of transmission.

## **20. Rights of Third Parties**

20.1 The Company and the Client do not intend that any of the terms and conditions of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to the Contract.

## **21. Anti-Bribery and Corruption**

21.1 The Client and the Company undertake each to comply with, and that the Services will be performed in accordance with, (a) the Bribery Act 2010; and (b) any anti-bribery or anti-corruption laws of the jurisdiction in which the Services are being provided, as amended from time to time ("the Anti-Corruption Laws") and that each shall not do, nor omit to do, any act that will lead to the other being in breach of any of the Anti-Corruption Laws.

21.2 The Client and the Company shall each have in place and comply with their own anti-bribery and corruption policy ("Company Anti-Bribery and Corruption Policy") to ensure that each complies with the Anti-Corruption Laws. Each shall review their Anti-Bribery and Corruption Policy on a regular basis and shall promptly implement any amendments to their Anti-Bribery and Corruption Policy which each considers necessary for continued compliance with the Anti-Corruption Laws.

21.3 The Client and the Company shall co-operate with each other from time to time in connection with the obligations of each under this clause. This obligation shall continue after the expiry or termination of this Contract.

21.4 The Client and the Company shall immediately notify the other in writing of any suspected or known breach of their Anti-Bribery and Corruption Policy or the Anti-Corruption Laws insofar as it affects the Services under this Contract. This obligation shall continue for a period not exceeding three months after the expiry or termination of this Agreement.

## **22. General Conditions**

22.1 These Conditions are complete and exhaustive and shall be in substitution for any oral or other arrangements made between the Company and the Client. No other terms and conditions (other than terms and conditions specified in the Proposal) shall apply to the Contract relating to the provision of the Services by the Company to the Client. The parties agree that they have not entered into this Contract in reliance upon any statement, representation, covenant, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) except as expressly set out in this Contract. Nothing in this clause 22.1, however, shall exclude any liability on the part of either party for fraud or fraudulent misrepresentation.

22.2 The provisions of these Conditions which are expressly or impliedly intended to survive the termination or expiry of the Contract shall survive such termination or expiry.

22.3 The Company shall not be liable for failure to perform its obligations hereunder due to, fires, storms, riots, strikes, disease, shortages of materials, lock-outs, wars, floods, civil disturbances, terrorism (or material threat of an act of terrorism), Governmental control, major technical malfunction (including, without limitation, failure of the internet), pandemic, restriction or prohibition whether local or national.

22.4 If any provision of this Contract is or becomes illegal, invalid or unenforceable under the law of any jurisdiction, that shall not affect or impair: (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Contract.

22.5 By accepting the Proposal, the Client shall be deemed to have accepted these Conditions in their entirety. No addition or amendment to these Conditions, any exclusion of these Conditions or any substitution of any other terms by the Client will be accepted by the Company unless such an addition, amendment, exclusion or substitution has been confirmed by a director of the Company in writing. This may lead to the re-appraisal by the Company of any agreed timetable for the performance and/or the Fee quoted in the Proposal for the Services.

## **23. Law**

23.1 The Contract shall be governed by the laws of Scotland and the Scottish courts shall have exclusive jurisdiction save in respect of enforcement where their jurisdiction shall be non-exclusive.

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