

Definitions

"Acceptance" means written, oral or other acceptance by a Client of a Proposal by the Company for the Service.

"Consultancy Service" means the bespoke marketing consultancy services provided by Company (i.e. either one off bespoke services or bespoke continuous services).

"Project Service" means the marketing deliverables provided by Company.

"Client" means the party to whom the Company provides the Service.

"Confidential Information" means in respect of the Service all information, data or material of whatsoever nature in any form, which either party, discloses to the other pursuant to this Contract (including the Proposal 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). It shall not include any information or materials which: (a) is in or enters into the public domain (other than as a result of disclosure by the receiving party or any third party to whom the receiving party disclosed such information); (b) were already in the lawful possession of the receiving party prior to the disclosure by the disclosing party; (c) are subsequently obtained by the receiving party from a third party who is free to disclose them to the receiving party; or (d) are required to be disclosed by law or regulatory authority.

"Subscription Service" means the non-Consultancy Service provided by the Company and constitutes: (a) a monthly meeting of up to two hours in length; (b) telephone and email support at a reasonable level.

"Initial Period" means the first six months of the Subscription Service.

"Contract" means these terms and conditions together with the Proposal constitute the entire agreement between the parties. The event of conflict these terms and conditions prevail over those in the Proposal.

"Deliverables" means collateral, design, survey results, reports, data, summaries, comments, discussion, consultancy, project management and/or analysis provided by the Company to Client pursuant to the Contract.

"Intellectual Property Rights" means copyright, trade marks, designs, patents and/or know how.

"Proposal" means the written proposal and/or quotation (exclusive of VAT unless otherwise stated) provided by the Company to the Client, which proposal shall be valid for acceptance for 1 month from the date of issue.

"Service" means the Consultancy Service and/or Subscription Service and/or Project Service (as the case may be) as specified in the Proposal.

In these terms and conditions a reference to the singular includes plural and vice versa (unless the context otherwise requires).

1 The Contract

1.1 The Client appoints the Company and the Company accepts such appointment to provide the Services and Deliverables upon these terms and conditions, which may only be changed by written agreement of the parties.

2 Payment of Fees

2.1 For Subscription Services payment of the monthly fees will be made in quarterly instalments. The first payment of such fees will be due on the Acceptance date. The second and subsequent payments will be due on the succeeding relevant quarter days.

2.2 For Consultancy and/or Project Services payment of fees shall be 50% of estimated fees on Proposal acceptance the balance of fees on delivery of Deliverables. Any Service provided over more than one calendar month will be subject to invoicing at the end of each calendar month with the final invoice raised on delivery of final Deliverables.

2.3 All invoices shall be due on the invoice date and shall be subject to payment within 14 days. Any payment after this 14 day period shall entitle Company to charge interest at the rate permitted by statute from the invoice date to the date when the Company receives full payment. Client shall pay the interest promptly on demand.

2.4 The Company shall be entitled to recover reasonable expenses incurred pursuant to the provision of the Services subject to copy receipts being provided to Client upon written request unless such expenses have been included in the fees.

2.5 For Services carried out wholly or in part outside the UK, if through any currency fluctuation the Sterling equivalent of the cost to the Company of any obligations incurred in respect of overseas work for the Client exceeds the cost shown in the Proposal, the Company shall be entitled to charge for such obligations at the exchange rate which is in operation at the time the payment is made abroad.

2.6 If the Client disputes, deems incorrect or inaccurate any invoice, contract or agreement the Company must be notified, in writing, within 48 hours of receipt. Failure to do so renders any future claim inadmissible.

3 Termination

3.1 For Subscription Services upon completion of the Initial Period either party may terminate this Contract upon 1 months notice.

3.2 Either party may terminate this Contract immediately for a material breach by the other which is incapable of remedy or, if capable of remedy, is not remedied within 45 days of notification being given to the defaulting party.

3.3 For Subscription Services if (a) the number of Client subscribers falls below an acceptable level to the Company, or (b) the Company is unable to or finds it impracticable to continue the Service or any part of it, it shall be entitled to terminate this Contract by serving 1 months notice at any time. The Company will use its reasonable endeavours to complete any Deliverable in progress and the Company will remain entitled to payment for completion of that Deliverable.

4 Change, Delay or Cancellation

4.1 If, the Client requests changes to the Service the Company reserves the right to revise the Proposal.

4.2 If a Service is shortened, delayed, cancelled or terminated early by the Client, the final invoice will include the balance of the fees for providing the Service plus any reasonable costs and expenses incurred by the Company due to the Client's acts or omissions. For example, the Client shall be liable for the costs and expenses incurred by the Company for pre-booked fieldwork, which is delayed, not used or not fully used by reason of the Client's acts or omissions.

4.3 The Client is responsible for the prompt delivery to the Company of all material owned by or in possession of the Client reasonably required by Company to provide the Services and Deliverables. If the Client fails to comply with this clause the Client shall be liable for the consequential delays and reasonable additional costs and expenses incurred by the Company in providing the Service.

5 Subcontracting

5.1 To assist the Company in providing the Service the Company shall have the right to subcontract any part of the Service and to appropriate third parties or agencies. The Company is only responsible for the quality of the service provided by subcontractors if those subcontractors have been

selected and paid for directly by the Company. If the Client designates a specific subcontractor, then the Company shall not be responsible for the accuracy, completeness or quality of the work of that subcontractor.

6 Intellectual Property Rights and Public Statements

6.1 For Subscription Services the Intellectual Property Rights in the Deliverables vest in the Company at all times. The Client will be entitled on the completion of the Service and after payment of all fees due to the Company to use the Deliverables for the bona fide and proper purposes of its business but shall not grant licences to others.

6.2 For Consultancy Services the Intellectual Property Rights in the Deliverables vest in the Client subject to payment of all fees due to the Company in respect of such Deliverables, and the Company shall have the right to use without charge, such Deliverables for their internal use and in connection with any relevant legal dispute.

6.3 The Client shall not disclose the Deliverable publicly in any manner that is likely to harm the Company's reputation or business. In particular, the Client agrees not to use the Deliverable in any manner that could or does exaggerate, distort or misrepresent the findings of or data supplied by the Company.

6.4 The parties shall be entitled to list the other as its' service provider or client in marketing/promotional material, except for this right the Client shall have no right to use the Company's name, logo, or slogans without the prior written consent of the Company.

7 Confidentiality

7.1 The receiving party agrees that it shall (a) use the Confidential Information only to full its obligations pursuant to this Contract; (b) treat all Confidential Information of the disclosing party as secret and confidential and shall not copy or disclose any such Confidential Information to any third party; (c) not, without the express written consent of the disclosing party, disclose the Confidential Information or any part of it to any person except to the receiving party's directors, employees, parent company, subsidiaries or agreed subcontractors, who need access to such Confidential Information for use in connection with the Services and who are bound by appropriate confidentiality and non-use obligations; and (d) comply promptly with any written request from the disclosing party to destroy or return any of the disclosing party's Confidential Information (and all copies, summaries and extracts of such Confidential Information) then in the receiving party's power or possession.

8 Data Protection

8.1 In the event that the Service and/or Deliverables involve the supply to the other party of individual's names and/or other personal data for the purpose of controlling or processing such data, the disclosing party shall prior obtain the necessary consent from the relevant individuals or ensure that it otherwise has the right under the Data Protection Act 1998 or other relevant local data protection laws and regulations to provide such data.

8.2 In connection, with personal data supplied by the Client to the Company, the Company shall:(a) process such data only for the purposes of providing the Services; (b) take such technical and organisational security measures against unauthorised and unlawful processing of, accidental loss of, destruction of or damage to personal data as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, destruction or damage and the nature of the data to be protected; and (c) answer the Client's reasonable enquires to enable the Client to monitor the Company's compliance with this clause. The Client undertakes to comply with the Data Protection Act 1998 and keep personal data supplied by the Company secure and only use such data in accordance with the eight data protection principles set out in the Act. Subject to prior consent from an individual the Company reserves the right to re-contact an individual for participation in further surveys.

9 Limits and Exclusions of Liability

9.1 All conclusions, recommendations, forecasts, reports, letters or other communications, whether oral or written, provided by the Company (together, the "Recommendations") are made in good faith and on the

basis of information available to the Company at the time whether from the Client or from information in the public domain and the validity of such Recommendations will depend, amongst other factors, on the effective cooperation of the Client and the quality of the information made available by the Client. No warranty or representation, express or implied, is given as to the Recommendations provided by the Company and the Client shall be responsible for the proper adaptation of such Recommendations to the Client's own circumstances.

9.2 All Recommendations given by the Company are for the use of the Client only and are not to be disclosed or reproduced to third parties without the prior written consent of the Company.

9.3 The Company shall not be liable for any consequential or indirect loss suffered by the Client whether such loss arises from a breach of contract or tort or in any other way (including losses arising indirectly or consequentially from the Company's negligence). Compensation for any direct losses arising under this agreement shall be limited to the value of the agreement.

9.4 For the avoidance of doubt, time shall not be of the essence and the Company shall accordingly incur no liability to the Client in respect of any failure to complete the Deliverables or any part thereof by any date specified in this agreement.

9.5 The Client shall indemnify the Company against all claims, liabilities, demands, proceedings, costs and expenses arising in respect of loss of or damage to property belonging to, or death or personal injury of, any person arising as a result of any act or omission of the Client in the performance or purported performance of this agreement, except to the extent that such loss, damage, injury or death is caused by the negligence of the Company.

9.6 This agreement contains all the terms of the agreement between the Parties in respect of the subject matter and may only be varied pursuant to clause 11. It supersedes any previous written agreement between the Parties and any written or oral representations or assurances provided by one Party to the other during the negotiation of the agreement or at any time thereafter. For the avoidance of doubt, nothing in the foregoing removes liability for any fraudulent misrepresentation made by one Party to the other.

10 Product Testing

10.1 Notwithstanding anything to the contrary in this Contract where the Service involves testing or using the Client's products (including prototypes) and/or third party products supplied by Client, the Client shall indemnify the Company from and against any losses, third party claims, demands, damages, costs, charges, expenses or liabilities (or actions, investigations or other proceedings in respect thereof) which the Company may suffer or incur relating to or arising directly or indirectly out of or in connection with testing or using such products.

11 Miscellaneous

11.1 The obligations set out in clauses 2, 4.2, 7, 8, 9, 10, 11, 12.2, 12.5 and 12.6 shall survive termination.

11.2 Any notice given hereunder shall be by post or facsimile. In the case of the notice to the Company, notices shall also be copied to the Legal Department at the address shown below. Email notification is not sufficient.

11.3 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, key employees not being available to perform the Services through death, illness or departure from the Company, floods, civil disturbances, terrorism, Governmental control, restriction or prohibition whether local or national.

11.4 The invalidity or unenforceability of any part of this Contract shall not affect the other provisions of this Contract.

11.5 No term of this Contract shall be enforceable by a third party.

11.6 English law governs this Contract and in the event of a dispute the parties agree to submit to the non-exclusive jurisdiction of the English courts.