

## Standard Business Terms for Delivery of Professional Services

May 2018

### 1. Definitions

- 1.1 "Consultancy" is defined as Cortex Consulting LLP, a limited liability partnership incorporated in England and Wales [registration number OC404431], whose registered office is at 27, Old Gloucester Street, London WC1N 3AX;
- 1.2 "Client" means the recipient of the Services identified in the Statement of Work;
- 1.3 "Deliverable" means a work produced by the Consultancy in the course of Services for delivery to the Client.
- 1.4 "Party" or "Parties" means the Consultancy and Client as Parties to the relevant Statement of Work;
- 1.5 "Services" means any or all Services the Consultancy has agreed to supply to the Client under a Statement of Work;
- 1.6 "Statement of Work" means any contract that the Parties enter into for the provision of Services;
- 1.7 For the purposes of clause 10, the terms "Data Controller", "Data Processor", "Personal Data" and "Process" shall have the meanings given to them in the Data Protection Act 1998 ("DPA").

### 2. Nature of This Document

- 2.1 This document defines the terms under which the Consultancy will undertake such Services for the Client as may be agreed between the parties from time to time. No changes will apply unless in writing and signed by both parties.
- 2.2 This document is an agreement for the provision of Services as specified Statements of Work agreed between the parties; it is not an agreement for the provision of labour.
- 2.3 Where it is agreed between the parties that any Services are to be provided, a Statement of Work setting out the nature of the Services and any other material terms will be produced by the Consultancy and provided to the Client.
- 2.4 On receipt of a Statement of Work
  - 2.4.1 if the Client accepts the Statement of Work, the Client will promptly sign and return one copy to the Consultancy for countersignature
  - 2.4.2 if the Client does not accept the Statement of Work, the Client will promptly advise the Consultancy.
- 2.5 Upon a Statement of Work being signed by both parties, it will become a contract binding on the parties.
- 2.6 Either party may request change to the nature or scope of Services covered by a Statement of Work. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change. No such change will become effective until agreed in writing between the parties.

### 3. Services

- 3.1 The Consultancy will provide Services as agreed in a Statement of Work, so far as is reasonably practicable within any agreed timescale, and with all proper skill and care.
- 3.2 It is the Client's responsibility

- 3.2.1 to afford the Consultancy with such access, information and staff cooperation as the Consultancy may reasonably require for the proper performance of any Services, and
- 3.2.2 to ensure that all relevant Health and Safety policies, risks, information and relevant statutory compliance measures are disclosed to the Consultancy.

#### **4. Confidentiality**

- 4.1 Unless the parties have signed a separate agreement containing more specific provisions in relation to confidentiality (in which case the provisions of such agreement will continue to apply in lieu of this clause), each party
  - 4.1.1 will keep any confidential information disclosed by the other secret, and
  - 4.1.2 on termination (or sooner if required) will at the option of the owner thereof return or destroy such confidential information.
- 4.2 Neither party may use or take advantage of any such confidential information without the discloser's consent, even after the end of this Agreement.
- 4.3 This obligation does not apply to
  - 4.3.1 information known to the receiver before disclosure by the other party, and free of any obligation of confidentiality, or
  - 4.3.2 information independently developed by the receiver, without reference or access to the discloser's confidential information, or
  - 4.3.3 information subsequently acquired by the receiver, free of any obligation of confidentiality, or
  - 4.3.4 information which becomes public knowledge without fault on the part of the receiver, or
  - 4.3.5 disclosures made to the extent required by some applicable legal or regulatory requirement.

#### **5. Copyright and Intellectual Property Rights**

- 5.1 Where pre-existing works are with the knowledge and consent of the Client incorporated in any Deliverable, the Client has non-exclusive irrevocable world-wide royalty free licence to use modify and distribute such pre-existing works, but only as part of the Deliverable; all other rights in the pre-existing works are reserved.
- 5.2 Subject thereto, all rights in any Deliverable pass to the Client upon payment of all fees due to the Consultancy which relate to that Deliverable, and the Consultancy will execute a formal assignment thereof on request by the Client.
- 5.3 The Consultancy will indemnify the Client against infringement of third party rights by a Deliverable, provided that the Client notifies the Consultancy of any relevant third-party rights promptly on such rights becoming known to or suspected by the Client.
- 5.4 Nothing shall prevent the Consultancy from using techniques, ideas, and other know-how gained during the performance of Services under a Statement of Work in the furtherance of its own business, to the extent that such does not result in disclosure or abuse of confidential information in breach hereof, or any infringement of any Intellectual Property Rights of the Client.

## 6. Charges and Payment

- 6.1 Estimates are subject to change if based on incorrect information provided by the Client, or if any specified dependencies / facilities are not available on time, or if any equipment required to be provided by the Client fails to operate correctly (save where the engagement itself is for the repair thereof).
- 6.2 All sums due shall be invoiced and paid as specified in the applicable Statement of Work.
- 6.3 The Client will pay the Consultancy's invoices within 30 days.
- 6.4 Unless otherwise specified, where payment is on a time and materials basis, the Consultancy may invoice monthly.
- 6.5 Where payment is on a fixed price basis, the Consultancy will invoice at the conclusion of the applicable Statement of Work; however, the Consultancy reserves the right to invoice 50% of the agreed fee before conclusion, if the Services are taking longer than defined in the Schedule through no fault of the Consultancy.
- 6.6 If any of the Consultancy's invoices becomes overdue,
  - 6.6.1 the Consultancy may suspend provision of Services, and any agreed timescale will be automatically extended;
  - 6.6.2 the Consultancy may also terminate any current Statement of Work for material breach whilst any payment is more than 7 days overdue.

## 7. Liability

- 7.1 Neither party seeks to exclude or limit liability
  - 7.1.1 for breach of confidentiality,
  - 7.1.2 for intellectual property infringement,
  - 7.1.3 resulting from failure to comply with its own obligations in relation to tax and/or NIC,
  - 7.1.4 for breach of data protection legislation,
  - 7.1.5 in relation to bribery and corruption,
  - 7.1.6 for death, personal injury, fraud, or repudiatory breach, or
  - 7.1.7 otherwise where it is not lawful to do so.
- 7.2 Subject thereto,
  - 7.2.1 **each party expressly excludes liability for economic, consequential or indirect loss or damage of any kind, or for loss of profit, business, revenue, goodwill or anticipated savings.**
  - 7.2.2 **neither party shall be liable for any loss or damage in excess of the higher of (a) £100,000, and (b) 125% of the total sums payable under a Statement of Work, except where it may not lawfully exclude or limit liability**
  - 7.2.3 any liability or remedy for innocent or negligent (but not fraudulent) misrepresentation is expressly excluded.

## **8. Termination**

- 8.1 Either party may terminate any current Statement of Work at any time if the other is in material breach of these terms or if the other becomes insolvent, by immediate written notice.
- 8.2 Any provision of these terms which expressly or by implication is intended to come into or continue in force on or after termination of any Statement of Work shall remain in full force and effect.

## **9. Force Majeure**

If either party is obstructed in performing any of its obligations under a Schedule by an event outside its reasonable control, then performance to the extent obstructed is suspended for so long as the obstruction continues. Whilst performance is suspended and has been so for more than 7 days, either party may terminate that Schedule by immediate written notice.

## **10. Data Protection**

- 10.1 The parties mutually acknowledge their respective responsibilities (a) to comply with the provisions of the Data Protection Act 1998 in relation to Personal Data, and (b) to use Personal Data provided by the other so far as necessary for the proper performance of this Agreement or any Schedule hereto, but not further or otherwise.
- 10.2 Where a party Processes Personal Data in connection with this Agreement or any Schedule hereto, that party shall:
- 10.2.1 where the other party is the Data Controller in relation to such Personal Data, act only on instructions from the other party; and
  - 10.2.2 comply with the provisions of the seventh principle set out in Schedule 1 Part 1 Paragraph 7 of the DPA (which requires that appropriate, technical and organisational measures shall be taken against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data);
  - 10.2.3 comply at all times with the DPA and shall not perform its obligations under this agreement in such a way as to cause the other party to breach any of its applicable obligations under the DPA.

## **11. Bribery and Corruption**

- 11.1 The parties shall each comply with all applicable legal requirements relating to bribery and corruption.
- 11.2 The Consultancy shall comply with any Client policies relating to bribery and corruption that may be disclosed to the Consultancy, as though such policies applied to and had been adopted by the Consultancy.

## **12. Notices**

- 12.1 Any notice to be given by either party to the other shall be in writing and may be sent by recorded delivery to the address of the other and shall be deemed to be served 2 days following the date of posting.

## **13. Electronic signatures**

- 13.1 Any Statement of Work may be signed by electronic signature (whatever the form the electronic signature takes), and that such method of signature shall be equally conclusive of the intention of each party to be bound by its terms and conditions as if signed with manuscript signatures.

**14. Law**

These terms and any non-contractual disputes or claims between the parties are governed by the laws of England & Wales, whose courts shall have sole jurisdiction in relation to all matters arising.