

## TERMS AND CONDITIONS OF SERVICE

Paul Strout trading as GDPR Assist of 17 Finchley Close, Bury, Greater Manchester, BL8 2EJ (“**GDPR Assist**”) provides GDPR help and advice to business clients. These terms and conditions shall apply to the provision of services by GDPR Assist to its clients.

### 1. Definitions and Interpretation

1.1 The following expressions have the following meanings:

<b>Agreement</b>	means the agreement entered into by GDPR Assist and the Client incorporating the Letter of Engagement and these terms and conditions which shall govern the provision of the Services.
<b>Business Day</b>	means any day (other than Saturday or Sunday) on which banks are open for business in England.
<b>Client</b>	means the party purchasing the Services from GDPR Assist (including where the party purchases the Services on behalf of another person who is not a party to the Agreement).
<b>Commencement Date</b>	means the date of the Agreement.
<b>Confidential Information</b>	means, in relation to either party, information which is disclosed to that party by the other party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such).
<b>Data Protection Legislation</b>	means (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws that implement such legislation; and (d) any laws that replace, extend, re-enact, consolidate or amend any of them.
<b>Fees</b>	means any and all sums due under the Agreement from the Client to GDPR Assist.
<b>GDPR</b>	means the General Data Protection Regulation (EU) 2016/679.
<b>Letter of Engagement</b>	means the document identified as a letter of engagement from GDPR Assist to the Client.
<b>Personal Data</b>	shall have the same meaning as that in the Data Protection Legislation.
<b>Services</b>	means the services to be provided by GDPR Assist to the Client in accordance with Clause 2 of the Agreement, as set out in the Letter of Engagement; and
<b>Term</b>	means the term of the Agreement as stated in the Letter of Engagement.

1.2 Each reference in these terms and conditions to:

1.2.1 **writing** includes a reference to any communication by electronic means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

- 1.2.3 **these terms and conditions** is a reference to this document as amended or supplemented at the relevant time;
  - 1.2.4 a **Clause** is a reference to a clause of these terms and conditions;
  - 1.2.5 a **party** or the **parties** refer to the parties to the Agreement;
  - 1.2.6 a **person** includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
  - 1.2.7 **process** or **processing** is a reference to processing Personal Data under the Data Protection Legislation.
- 1.3 The headings used in these terms and conditions are for convenience only and shall have no effect upon their interpretation.
- 1.4 Words imparting the singular number shall include the plural and vice versa.

## **2. Provision of the Services**

- 2.1 GDPR Assist shall from the Commencement Date or such other date stated in the Letter of Engagement provide the Services to the Client.
- 2.2 GDPR Assist shall provide the Services with reasonable skill and care in accordance with current standards in the data protection consultancy services sector in the United Kingdom.
- 2.3 GDPR Assist shall act in accordance with all reasonable instructions given to it by the Client provided that such instructions are compatible with the of Services.
- 2.4 GDPR Assist shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 2.5 The Client understands that GDPR Assist is not a legal practice and that it is unable to provide legal advice. The Client should consult a solicitor if legal advice is required.

## **3. Client's Obligations**

- 3.1 The Client shall provide all relevant information to GDPR Assist that is necessary for it to provide the Services.
- 3.2 If GDPR Assist requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part at any time, the Client shall provide it in a reasonable and timely manner.
- 3.3 If any consents, licences or other permissions are needed from any third parties, the Client must obtain them before the Commencement Date.
- 3.4 If the Client requires GDPR Assist to have access to its premises or any other location, access to which is controlled by the Client, the Client shall ensure that GDPR Assist has access to such location(s) as required.
- 3.5 Any delay or failure to provide the Services resulting from the Client's failure or delay in complying with any of the provisions of this Clause 3 shall not be the responsibility or fault of GDPR Assist.

## **4. Fees**

- 4.1 The Client shall pay the Fees to GDPR Assist as stated in the Letter of Engagement.
- 4.2 GDPR Assist shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 4.3 All payments required to be made pursuant to the Agreement by the Client shall be made on receipt of the relevant invoice.
- 4.4 All payments shall be made in £ sterling in cleared funds to such bank in the United Kingdom as GDPR Assist may from time to time nominate, without any set-off, withholding or deduction.

4.5 Without prejudice to Clause 8.2 any sums which remain unpaid shall incur interest on a daily basis at 8% per annum above the base rate of the Bank of England from time to time until payment is made in full of any such outstanding sums.

4.6 GDPR Assist shall not be obliged to continue working on any matter for the Client when any invoice is outstanding even where that causes or may cause the Client loss or inconvenience.

## **5. Insurance and Liability**

5.1 GDPR Assist shall have in place suitable and valid insurance that shall include professional indemnity and public liability insurance.

5.2 Nothing in these terms and conditions shall limit or exclude GDPR Assist's liability for death or personal injury.

5.3 GDPR Assist's total liability for any loss or damage caused as a result of its negligence or breach of contract shall be limited to £1,000,000.

5.4 GDPR Assist shall not be liable in respect of any:

5.4.1 indirect or consequential losses, damages, costs or expenses;

5.4.2 loss of actual or anticipated profits;

5.4.3 loss of contracts;

5.4.4 loss of use of money;

5.4.5 loss of anticipated savings;

5.4.6 loss of revenue;

5.4.7 loss of goodwill;

5.4.8 loss of reputation;

5.4.9 ex gratia payments;

5.4.10 loss of business;

5.4.11 loss of operation time;

5.4.12 loss of opportunity; or

5.4.13 loss of damage to or corruption of data

whether or not such losses were reasonably foreseeable, or GDPR Assist had been advised of the possibility of the Client incurring such losses. For the avoidance of doubt, clauses 5.4.2 to 5.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

## **6. Confidentiality**

6.1 Each party undertakes that except as provided by Clause 6.2 or as authorised in writing by the other party, it shall, at all times during the Term and for 5 years after the termination of the Agreement:

6.1.1 keep confidential all Confidential Information;

6.1.2 not disclose any Confidential Information to any other party;

6.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;

6.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

6.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that party, would be a breach of the provisions of Clauses 6.1.1 to 6.1.4.

6.2 Either party may:

6.2.1 disclose any Confidential Information to:

6.2.1.1 any sub-contractor or supplier of that party;

6.2.1.2 any governmental or other authority or regulatory body; or

6.2.1.3 any employee or officer of that party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under Clause 6.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 6, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

6.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the Commencement Date, or at any time after that date, becomes public knowledge through no fault of that party. In making such use or disclosure, that party must not disclose any part of the Confidential Information that is not public knowledge.

6.3 The provisions of Clause 6 shall continue in force notwithstanding the termination of the Agreement for any reason.

## **7. Force Majeure**

7.1 Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

7.2 If a party cannot perform their obligations as a result of force majeure for a continuous period of ninety days, the other party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

7.3 Clauses 7.1 and 7.2 shall not apply in respect of any failure by the Client to make any payment due to GDPR Assist.

## **8. Term and Termination**

8.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for the Term subject to the provisions of this Clause 8.

8.2 GDPR Assist may immediately terminate the Agreement by giving written notice to the Client if any sum owing to GDPR Assist by the Client is not paid within 14 Business Days of the due date for payment

8.3 Either party may immediately terminate the Agreement by giving written notice to the other party if:

8.3.1 the other party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 14 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

8.3.2 an encumbrancer takes possession, or where the other party is a company, a receiver is appointed, of any of the property or assets of that other party;

8.3.3 the other party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

- 8.3.4 the other party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under the Agreement);
  - 8.3.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other party;
  - 8.3.6 the other party ceases, or threatens to cease, to carry on business; or
  - 8.3.7 control of the other party is acquired by any person or connected persons not having control of that other party on the date of the Agreement. For the purposes of Clause 8, **control** and **connected persons** shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 8.4 For the purposes of Clause 8.3.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects.
- 8.5 The rights to terminate the Agreement shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

## 9. Effects of Termination

- 9.1 Upon the termination of the Agreement for any reason:
- 9.1.1 any sum owing by the Client to GDPR Assist shall become immediately due and payable;
  - 9.1.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
  - 9.1.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any party may have in respect of any breach of the Agreement which existed at or before the date of termination;
  - 9.1.4 subject as provided in this Clause 9 and except in respect of any accrued rights neither party shall be under any further obligation to the other; and
  - 9.1.5 each party shall (except to the extent referred to in Clause 6) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other party any documents in its possession or control which contain or record any Confidential Information.

## 10. Data Protection and Processing

- 10.1 GDPR Assist and the Client shall comply with the Data Protection Legislation.
- 10.2 If the Client requires GDPR Assist to process any Personal Data, the parties shall enter into a data processing agreement before GDPR Assist processes any Personal Data on the Client's behalf.
- 10.3 Paul Strout t/a GDPR Assist is registered with the Information Commissioner under reference ZA513621.
- 10.4 GDPR Assist's privacy policy is available at [www.gdprassist.co.uk/privacy-policy](http://www.gdprassist.co.uk/privacy-policy)

## 11. No Waiver

- 11.1 No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right.
- 11.2 No waiver by either party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**12. Set-Off**

12.1 The Client shall not be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

**13. Assignment and Sub-Contracting**

13.1 The Agreement shall be personal to the parties. Save as provided for in Clause 13.2 below, neither party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed.

13.2 GDPR Assist shall be entitled to perform any of the obligations undertaken by it through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of GDPR Assist.

**14. Time**

14.1 The times and dates referred to in the Agreement shall not be of the essence.

14.2 Clause 14.1 shall not apply in respect of payments due by the Client to GDPR Assist in which case time shall be of the essence.

**15. Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the parties other than the contractual relationship expressly provided for in the Agreement.

**16. Third Party Rights**

16.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

16.2 Subject to Clause 13, the Agreement shall continue and be binding on the transferee, successors and assigns of either party as required.

**17. Notices**

17.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

17.2 Notices shall be deemed to have been duly given:

17.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

17.2.2 when sent, if transmitted e-mail and a successful return receipt is generated; or

17.2.3 on the fifth Business Day following mailing, if mailed by national ordinary mail, postage prepaid; or

17.2.4 on the tenth Business Day following mailing, if mailed by airmail, postage prepaid.

17.3 Notices shall be addressed to the most recent address or e-mail address notified to the other party.

**18. Entire Agreement**

18.1 The Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

18.2 Each party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to

the fullest extent permitted by law.

**19. Severance**

If one or more of the provisions of these terms and conditions is found to be unlawful, invalid or otherwise unenforceable, that or those provision(s) shall be deemed to be severed from the remainder which shall be valid and enforceable.

**20. Law and Jurisdiction**

20.1 The Agreement (including any non-contractual matters and obligations arising from it) shall be governed by and construed in accordance with the law of England.

20.2 Any dispute, controversy, proceedings or claim between the parties relating to the Agreement (including any non-contractual matters and obligations arising from them) shall fall within the exclusive jurisdiction of the courts of England.