



SUPPLY OF SERVICES CONTRACT TERMS

Agreed terms

1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details..

Conditions: these terms and conditions set out in 1 (Interpretation) to 10 (General) (inclusive).

Contract: the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details[, the Mandatory Policies], these Conditions and any Schedules.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

Deliverables: all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts) and the Key Deliverables set out in the Contract Details.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract, as described in Contract Details.

Services Start Date: the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Supplier IPRs: all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them.



1.2 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Commencement and term

The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 14 days notice or 1 months' written notice to terminate as agreed in the Contract Details, expiring on or after the first anniversary of the Services Start Date.

3. Supply of services

3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.

3.2 In supplying the Services, the Supplier shall:

- (a) perform the Services with reasonable care and skill;
- (b) use reasonable endeavours to perform the Services in accordance with the service description set out in the Contract Details
- (c) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose
- (d) comply with:
 - (i) all applicable laws, statutes, regulations from time to time in force; and
 - (ii) the Mandatory Policies,

provided that the Supplier shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract.

- (e) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to the Supplier, provided that the Supplier shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract; and
- (f) take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always



- (g) provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Contract.

4. Customer's obligations

4.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier; and
- (c) provide, in a timely manner, such information as the Supplier may reasonably require, and ensure that it is accurate and complete in all material respects; and

4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Data protection

The parties shall comply with their data protection obligations as set out in Data Protection Policy as stated on Elite Plan's website.

6. Intellectual property

6.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

6.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services and the Deliverables in the Customer's business during the term of the Contract.

6.3 The Customer grants the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

6.4 The Customer shall indemnify the Supplier in full against any sums awarded by a court against the Supplier arising of or in connection with any claim brought against the Supplier for



infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Supplier.

7. Charges and payment

- 7.1** In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 7.
- 7.2** All amounts payable by the Customer exclude amounts in respect of value added tax (VAT) as none is charged.
- 7.3** The Supplier shall submit invoices for the Charges within 14 days from the end of a calendar month or within 14 days of the end of the Contract. Each invoice shall include all reasonable supporting information required by the Customer.
- 7.4** The Customer shall pay each invoice due and submitted to it by the Supplier, within 14 days of receipt, to a bank account nominated in writing by the Supplier.
- 7.5** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under 9 (Termination):
- (a) the Customer 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 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) the Supplier may suspend all Services until payment has been made in full.
- 7.6** All amounts due under the Contract from the Customer to the Supplier shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Limitation of liability

- 8.1** The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £15,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2** References to liability in this 8 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3** Nothing in this 8 shall limit the Customer's payment obligations under the Contract.



- 8.4** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.5** Subject to 8.3 (No limitation in respect of deliberate default), 8.4 (No limitation on customer's payment obligations), 8.5 (Liability under identified clauses) and 8.6 (Liabilities which cannot legally be limited):
- (a) the Supplier's total liability to the Customer:
 - (i) for loss arising from the Supplier's failure to comply with its data processing obligations under 5 (Data protection) shall not exceed £10,000; and
 - (ii) for all other loss or damage shall not exceed £15,000.
 - (b) the Customer's total liability to the Supplier:
 - (i) for loss arising from the Customer's failure to comply with its data processing obligations under 5 (Data protection) shall not exceed £10,000; and
 - (ii) for all other loss or damage shall not exceed £15,000.
- 8.6** Subject to 8.3 (No limitation in respect of deliberate default), 8.4 (No limitation on customer's payment obligations), 8.5 (Liability under identified clauses) and 8.6 (Liabilities which cannot legally be limited), the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.7** The terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.8** The Supplier shall have no liability for an event, unless the Customer notifies the Supplier that it intends to make a claim in respect of that event within the notice period. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred OR its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

9.3 On termination of the Contract for whatever reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- (c) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

10. General

10.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2 Assignment and other dealings.

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.
- (b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

10.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by 10.3.
- (b) Each party may disclose the other party's confidential information:
 - (i) 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 Contract. 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 this 10.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

10.4 Entire agreement.

- (a) The Contract 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

10.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.



- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 10.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this 10.7 shall not affect the validity and enforceability of the rest of the Contract.
- 10.8 Notices.** Any notice given to a party under or in connection with the Contract shall be by email and shall be deemed delivered at the time of transmission.
- 10.9 Third party rights.** The Contract does not give rise to any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.
- 10.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.