



TERMS & CONDITIONS

## 1. The Service

1.1 Consult SMB Limited ('the Supplier') shall provide Services subject to these conditions. Any change to the Services or these conditions must be agreed in writing by the Supplier.

1.2 The Authority and Other Contracting Bodies ('the Customer') shall at their own expense provide the Supplier with the materials specified in the Service Definition and all necessary materials requested by the Supplier in relation to the Service (together "the Material").

1.5 If any software is provided as a part of the Services, the Supplier, on behalf of itself and any third party licensor(s) of the Software retains all rights and title to the Software and the Service and no Intellectual Property Rights or goodwill therein are transferred to the Customer.

1.6 In relation to the Service and the Software:

1.6.1 the Customer is granted a non-exclusive, perpetual, non-transferable right to use the Service and the Software;

1.6.2 the Customer agrees to comply with all governmental or other regulations relating to the use of the Service or Software.

1.7 The Customer must not remove or alter copyright and other proprietary notices contained in the Service or Software.

1.8 Any data content provided as part of the Service may be accessed by the Customer only for its own and its customers' use. Other than proper use of the data content in accordance with this Agreement, the Customer may not commercially exploit the data content in any way.

## 2. The Supplier's Obligations

2.1 During the Term the Supplier shall ensure that their Consultants shall:

- (a) at all times reasonably devote such time, attention and abilities to the Customer's business as may be necessary for the proper provision of the Services;
- (b) faithfully and diligently carry out all agreed Services for the Customer;
- (c) provide the Services and take all reasonable steps to comply with any timetable or other targets for progress or delivery or completion of the Services agreed in writing between the parties;
- (d) immediately on commencing work at the specified location detailed in schedule 1, or an alternatively agreed location, become acquainted with the specific rules governing the activities and conduct of people authorised to enter such premises, especially with reference to security, safety and fire precautions.
- (e) be responsible for ensuring that any Consultants provided are and remain adequately qualified to perform the Services, and for all necessary costs of training;
- (f) use the Customer's hardware, networks and software only as authorised, for the purpose of the Customer's business and for no other purpose;
- (g) observe the laws of the Country in which the Supplier and/or Consultants are based and/or is working and refrain from causing offence to any civil or religious institutions or practices or its inhabitants;

- (h) the Customer understands and accepts that the Supplier is entitled to seek, apply for, accept and fulfil contracts to supply goods and services to other parties, excluding the Customer in this contract, during the currency of this agreement.
- (i) the Supplier is free to enter into other contracts with other third parties at any time before, after or concurrently with the contract for services.

## 2.2 Indemnity & Insurance

- (a) the Supplier shall indemnify the Customer in accordance with the limits detailed in clauses 1.2 (b) & (c) for any losses resulting from any legally valid claim related and confined to the torts of Professional Negligence, Public & Employers liability.
- (b) it is warranted by the Supplier that Professional Indemnity Insurance with a limit of indemnity of £1,000,000 in the aggregate will be held for the duration of this agreement and the following 12 months.
- (c) it is warranted that the Supplier will hold for the duration of this agreement public liability insurance with a limit of indemnity of £2,000,000.
- (d) the Supplier accepts it has legal risk in respect of the torts of public & employers liability and professional negligence and therefore pays the costs of any premiums necessary for the provision of the insurances detailed in 1.2 (b) & (c).
- (e) the Supplier will agree to produce proof of such insurances upon demand.
- (f) the consultants will rectify any incorrect or unsatisfactory work which can be attributed to an error or an omission on the part of the consultant at the reasonable request of the Customer and as such must be performed in the Supplier's own time and without extra charge.

## 2.3 Holidays & Absence of Consultants

- (a) the Supplier is an independent company and as such has no rights to holiday or sickness compensation from the Customer. However, in the event that any consultant wishes to take any holiday entitlement in accordance with his or her contract with the Supplier, the consultants holiday and absences (to meet other commitments which entail temporary absence of the consultant) will be agreed between the Supplier and the Customer) two weeks in advance. The Supplier shall notify the Customer of any absences of any Representative due to accidents, sickness and unforeseeable circumstances as soon as reasonably practicable. The Supplier shall use its reasonable endeavours to find a replacement for the consultants during such a period of sickness or absence.
- (b) No fees (as detailed in schedule 1) will be payable in respect of any period during which a consultant is absent and no alternative has been found.

## 2.4 Substitution

- (a) The Supplier may substitute the services of the consultant to fulfil this contract during its term provided that:
  - (i) the Customer is reasonably satisfied that the proposed substitute possesses the necessary skills, knowledge, expertise, personnel and resources to fulfil the Services;
  - (ii) the Customer is reasonably satisfied that the proposed substitute will comply with its rules on health, safety, security and confidentiality;

- (iii) the Supplier warrants that any information supplied by the Supplier is accurate and that any information supplied by the Supplier in respect of any Consultant is honest and accurate.

## 2.5 Confidentiality

The Supplier and its Consultants shall not at any time during or after the Term:

- (a) divulge or allow to be divulged to any party any confidential information relating to the business or affairs of the Customer; this obligation of confidentiality will remain in force beyond the cessation or other termination of this Agreement;
- (b) undertake any deliberate act or conduct causing or calculated to cause damage to the reputation of the Customer or endanger the commercial security of the Customer;
- (c) divulge or allow to be divulged to any person the terms and conditions of this Agreement, with the exception of any necessary professional advisor.

## 3 Customer's Obligations

### 3.1 Terms of Payment and Expenses

- (a) Every 30 days from the commencement date, the Supplier will send to the Customer all completed weekly work sheets that have been checked and approved by the Customer if appropriate, together with the Supplier's invoice.
- (b) The Customer is obligated to make the Payments promptly for all days properly worked by the Consultants and approved by the Customer on weekly Work Sheets referred to above and invoiced every 30 days by the Supplier. The Customer will not be liable to pay for any days worked that have not been approved by the Customer;
- (c) Payment of approved invoices relating to approved worksheets will be made within 30 days via BACS.
- (d) The Customer will take full responsibility for meeting the cost of any reasonable expenses incurred in relation to the engagement outlined in Schedule 1. The Supplier shall agree the amount of such expenses with the Customer who shall fully reimburse the Supplier directly all reasonable expenses at cost as appropriate.
- (e) Payment of approved expenses will be made within 30 days via BACS.

### 3.2 The Customer will request that:

- (a) the Customer shall, at its own expense, provide the Supplier with all documents or other materials and data or other information necessary for the completion of the Service, in sufficient time to enable the Supplier to provide the Service in accordance with any timetable or other target for progress or completion agreed in writing between the parties;
- (b) the Customer shall ensure that the Supplier is accorded sufficient access to any of the Customer's premises, information, computer network, data or personnel and use of any equipment which is reasonably necessary for the completion of the Services. Where the Supplier requires access to any third party premises, information, data or personnel the Customer will make all reasonable efforts to arrange this for the Supplier.

## 4 Termination

4.1 This agreement shall terminate:

- (a) on the Expiry Date or completion of the Services, or exhaustion of the available days, if sooner; or
- (b) on the Customer giving the Supplier not less than 30 days' prior notice. If notice of termination is given by the Customer, the Customer will allow the Suppliers consultant(s) to work and be paid for in accordance with the daily rate.
- (c) In the event that the termination is caused by the Supplier's failure to exercise all reasonable care and skill in relation to its appointment then such termination will be without notice with all fees earned up to and including the date of termination to be paid.
- (d) The Customer or the Supplier have the right at any time to terminate this agreement by notice in writing to the other party in the event of a serious breach of the terms of this agreement which otherwise cannot be resolved by any reasonable means available by the other party; or
- (e) at any time by Customer if the Supplier fails to undertake the services to the Customer with the degree of technical knowledge and technical skill reasonable expected of a Supplier required to perform the services detailed in schedule 1. All earned fee up to and including the date of termination will be paid in accordance with clauses 3.1; or
- (f) at any time in the event of the Customer becoming bankrupt or being made the subject of a winding up Order or upon the appointment of a Receiver or Manager or the Customer entering into an arrangement with its creditors. The engagement shall determine forthwith without any compensation or right to damages or further payment; or
- (g) if the Customer terminates this contract the Customer will pay notice in accordance with terms 4.1 (b) and all outstanding and earned fees up to and including the date of termination and in accordance with clauses 4.1.

## 5 Termination Consequences

5.1 On expiry or other termination of this Agreement or at the end of Term, whichever arises sooner, the Supplier undertakes:

- (a) to deliver up to the Customer all correspondence, documents, computer discs and property belonging to the Customer which may be in the Supplier's or Consultant's possession or under its control;
- (b) to deliver to the Customer all information and customer contact details in its possession relating to opportunities to sell the Customer's products and services;
- (c) to confirm in writing within 7 days that all information held electronically by the Supplier or Suppliers representatives, agents or subcontractors relating to Services under this contract has been permanently destroyed;
- (d) to immediately cease working at the agreed location(s).

5.2 On expiry or other termination of this Agreement other than as described in clause 4.1(f) the Customer undertakes to pay to the Supplier all arrears of Payments and earned (authorised work only) but not yet paid fees up to and including the Expiry Date or date of termination if prior to the Expiry Date.

## 6 Intellectual Property Rights

- 6.1 Except as expressly agreed in the Service Definition, the provision of the services will not involve the transfer of any Intellectual Property Rights to the Customer.
- 6.2 The Customer acknowledge and accept that the Intellectual Property Rights in images used within the Deliverable may be licensed to the Supplier on standard forms of agreement, which place restrictions on future usage and are not capable of being assigned. Therefore, unless specifically advised to the contrary, the provision of such images to the Customer, are provided strictly in accordance with those third party terms and the Intellectual Property Rights in those images will not transfer to Customer under the assignment under clause 3.1, and such assignment will be subject to these third party rights.
- 6.3 Where Open Source Software is used in the provision of Services, the Customers use of Open Source Software shall be governed by the terms of the applicable open source licence(s). The Customer warrant and undertake that they will comply with the terms of the applicable open source licence(s) as such terms apply to their use of the applicable Open Source Software.
- 6.4 The Customer retains all Intellectual Property Rights in the Material supplied by them to the Supplier. The Customer warrant that any Material and its use by the Supplier for the purpose of providing the Service will not infringe the copyright or other rights of any third party or otherwise be defamatory of any third person or in breach of any legal requirement. The Customer shall provide such evidence as the Supplier may request from time to time as to the ownership of the copyright in the Material or that any Material is not in breach of any other legal requirement.

## 7 Liability

- 7.1 The Supplier shall have no liability to the Customer for any loss, damage costs, expenses or other claims for compensation arising from any Material or instruction supplied by the Customer which are incomplete, inaccurate, incorrect, illegible, out of sequence or in the wrong format or arising from late arrival or non-arrival or any other fault of the Customer, only in the event that, where it can reasonably be expected for the Supplier to have noted such discrepancy or fault, the Supplier shall promptly advise the Customer of such discrepancy or fault.
- 7.2 The Supplier shall not be liable to the Customer or be deemed to be in breach of this Agreement by reason of any delay in the performing or any failure to perform any of the Supplier's obligations in relation to the Service if the delay or failure was due to any cause beyond the Supplier's reasonable control. Such delays include circumstances where the Customer, or a third party outside of the Supplier's control, has not completed activities in accordance with the agreed timetable.
- 7.3 The Supplier shall not be liable for any loss, damage costs, expenses or other claims for compensation arising from failure of the Services to operate properly and reliably due to running environment conditions if those environment conditions are not as explicitly agreed between the Supplier and the Customer, and if the Customer cannot demonstrate that such conditions are met and maintained.

- 7.4 Except in the case of breach of confidence and intentional misconduct, the entire liability of the Supplier under or in connection with this Agreement shall not exceed the cost of the Services. The Supplier shall not be liable to the Customer for any indirect or consequential loss which may include without limitation damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity business interruption or loss or inaccuracy of information.
- 7.5 The express terms of this Agreement govern the contractual relationship of the parties and all other terms implied by statute, common law, custom, trade usage, course of dealing or otherwise, are hereby excluded to the fullest extent permitted by law.

## **8 Third Party Services**

- 8.1 The Customer warrant that any third party Contractors utilised by them in relation to the Services shall co-operate with and consult fully with the Supplier to enable the Supplier to fulfil its obligations under this Agreement and the Customer: (a) remain liable for any delay in the Services due to the actions of third party Contractors utilised by the them; and (b) shall not delay or withhold payment of the charges due to delays in the Services caused by such third party Contractors.

## **9 Acceptance & Site Maintenance**

- 9.1 The Supplier shall perform the Services with reasonable due care, skill and diligence, and in accordance with the standards as agreed between the parties in writing throughout the course of the project. The Supplier shall use reasonable endeavours to ensure that any dates specified for provision of the Services are met.
- 9.2 The Customer agrees to provide the Supplier with timely sign off for the key deliverables. The Customer acknowledge that in the absence of sign off of the key deliverables, the Services will be deemed to have been accepted by the Customer immediately upon:
- (a) use by them in a live operating environment or in the case of a website, such website going live on the world wide web;
  - (b) use by them in a live operating environment or in the case of a website, such website going live on the world wide web with conditions requiring additional services from the Supplier;
  - (c) failure to notify the Supplier in writing, of any non-conformity within ten days from the date that the key deliverables were completed.

## **10 Third Party Software**

- 10.1 The purchase and use of all third party software is under the terms and conditions of the relevant third party software provider, a copy of which will be provided to Customer by the Supplier upon request. The Customer accept that they have done their own due diligence regarding third party software and that the software meets their requirements.

## **11 Confidential Information and Data Protection**

- 11.1 Subject to clause 11.3, each party shall maintain the confidentiality of Confidential Information disclosed by the other party, and neither party shall disclose such information to any person other than those employees, consultants or directors of their own organisations and affiliates who need to know the information in order to use the

Service(s) (or, in the case of Supplier, in order to provide, operate and develop the Service).

- 11.2 Subject to clause 11.3, each party shall store and manage Confidential Materials with due care and skill, and neither party shall transfer or provide Confidential Materials to third parties nor allow persons other than employees, consultants or directors of their own organisation and affiliates to view or otherwise access such Confidential Materials.
- 11.3 Each party may disclose or provide the other party's Confidential Information or Confidential Material to relevant third parties in the following circumstances:
  - 11.3.1 when compelled to by law;
  - 11.3.2 where information is provided to a professional adviser with a legal obligation of confidentiality; and
  - 11.3.3 when either party commissions work relating to the Service(s) to a third party and that third party has an obligation of confidentiality equivalent to the obligation of confidentiality in this clause
  - 11.3.4 Each party shall only use Confidential Information disclosed by the other party for purposes related to the Service(s), and shall not use such information for any other purpose.
  - 11.3.5 Each party may duplicate Confidential Materials to the extent necessary in order to use the Service(s). Each party must, without delay, destroy, erase or return to the other party all Confidential Materials (including any duplicates) if requested to do so by the other party, including, without limitation, upon termination of the Agreement.
- 11.4 Each party must ensure that any employees, consultants or directors in their own organisation and affiliates who come to know the other party's Confidential Information comply with the content of this clause 11.
- 11.5 Supplier shall not access Customers Systems deployed by the Customer or the Customer Content, without the Customer's consent and acknowledges that the Customer Content remains the property of the Customer. If consent is given, the parties agree that Supplier will act as Data Processor in relation to any Personal Data contained in the Customer Content and the Customer will be the Data Controller. Supplier will only process such Personal Data in strict accordance with the instructions of the Customer and will ensure that all Customer Personal Data will be protected in accordance with the standards imposed by the Data Protection Act 1998 ("Act"). The terms Data Processor, Personal Data and Data Controller shall have the meanings ascribed to them in the Act. Supplier will collect and shall be entitled to use and retain Customer-Specific Information for the purposes of providing the Services and related services to the Customer. Supplier will only transfer such Customer-Specific Information to territories outside of the EU in circumstances where it complies with all relevant EU legislation.
- 11.6 The conditions in this clause 11 shall continue to remain in effect even after the termination of this Agreement.



## 12 Miscellaneous

The Supplier is free to enter into other contracts for services for other parties at any time either before, after or concurrently with this contract for services

- 12.1 During the Term the Supplier shall be an independent company and neither the Supplier nor its personnel will be the servant of the Customer.
- 12.2 These terms and conditions will apply to and govern the engagement. No variation of these terms and conditions will be effective unless mutually agreed in writing and signed by an authorised signatory.
- 12.3 This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights, which have already accrued to either of the parties.
- 12.4 The failure of either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
- 12.5 The Customer or the Supplier may assign the benefit of this Agreement either in whole or in part to any third party provided that Customer and the original Supplier shall remain liable to perform its obligations hereunder.
- 12.6 Neither party will be liable for failure to perform its obligations hereunder if the failure results from force majeure, Act of God, refusal of any licence or consent or any other act of any national, federal, state or local government authority or any department, agency or representative thereof, fire, explosion, accident, industrial dispute or anything beyond such party's reasonable control. If the assignment is suspended, Customer If this agreement is frustrated by force majeure or anything beyond either parties' reasonable control neither Customer nor the Supplier will have any liability to make any payment to the provider except to the extent of work actually carried out.
- 12.7 Any terms or conditions which conflicts with this agreement automatically overrides this agreement.
- 12.8 This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

## 13 Force Majeure.

- 13.1 Neither party shall be liable for any failure to comply with this Agreement which is due to Force Majeure.
- 13.2 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 30 days, either party may immediately terminate the Agreement on providing notice in writing to the other party.