



Government Procurement
Service



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STANDARD TERMS AND CONDITIONS
AND MASTER SERVICES AGREEMENT
G-CLOUD 11

Date: 22nd May 2019

TERMS OF ENGAGEMENT

- Proposals are valid for 30-days from the date of issue.
- All prices exclude VAT.
- A 30% mobilisation payment is payable before work starts.
- Nudge invoice for work as it is completed. This will be done every four weeks. You will begin receiving these regular invoices once the credit from your deposit has been exhausted.
- Standard invoices are due on 14-day terms and interest will be chargeable on overdue invoices at the UK statutory rate of interest (currently 8.5%).
- The client is paying for Nudge's time and expertise on a daily rate, there are many ways to deliver a project and our prices are based on our best estimates and our assumptions at the current time, along with our professional experience.
- Nudge may freely reference the project in an online, paper or any other form of portfolio.
- Full copyright and ownership of any original works (in most cases, works will be design and source code files) produced by Nudge for the project remain property of Nudge until the project has been paid for in full, after this point the copyright and ownership transfer to the client.
- We reserve the right to cancel the contract in the case of the client consistently failing to make a scheduled payment for two calendar weeks after the payment due date.
- In the case of contract cancellation, all original works created for the project become the exclusive property of Nudge and no money will be refunded.

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") shall govern the provision of services to XXXXX (the "Client") by Nudge Digital Ltd, 2 Redcliffe Way, Bristol, England, BS1 6NL ("Agency"). Additional terms, such as the services and deliverables to be provided, the schedule for the delivery and the amount of fees payable are set forth on the attached Schedule of Work (the "SOW") which is hereby incorporated by this reference and may, from time to time, be amended upon the written consent of both parties. In the event of any conflict between the terms of any SOW and the terms of this Agreement, the terms of the SOW shall control.

Where this MSA is attached as part of an estimate, proposal or order form, the SOW shall be the scope defined in that document.

1. PURCHASE OF TIME

Nudge are a consultancy; you are buying our time. Nudge know from extensive experience that we can deliver your project within the time and therefore cost outlined in this project. Both parties, however, acknowledge that there may be a mismatch in expectation of how a certain feature, design, piece of content or other deliverable is delivered. Should this unlikely scenario be the case, the mismatch will be uncovered during the planning stages and both parties will discuss the options on how Nudge should deliver the work by either planning the deliverable to fit within budgeted time, altering budget and time, or re-allocating time from a less important deliverable. At all times both parties will remain committed to delivering Chamber Online the best service and results possible.

2. ADDITIONAL SERVICES, PROJECT CHANGES

Any services outside the scope of the SOW or changes to previously approved work requested by the Client shall be the subject of an additional SOW or Change of Scope to be approved in writing by both parties. Each such additional SOW or Change of Scope will also be governed by this agreement.

3. EXPENSES

Client will be notified in advance for pre-approval of any additional expenses in excess of more than ten percent (10%) of those set forth on the SOW. At Agency's discretion, Client shall either pay such fees directly to the third-party vendor or reimburse Agency upon presentation of applicable invoices.

Agency shall maintain records of expenses. Where applicable, Agency will invoice Client for all fees related to acquisition of talent or talent services in advance and will only secure talent services upon receipt of all such fees from Client.

4. TIME OF PAYMENT AND LATE-PAYMENT CHARGES

The Client shall pay Agency for the work performed hereunder as set forth on the applicable SOW. In no event will any payment under this Agreement be contingent on receipt of any monies or other compensation by the Client. For the avoidance of doubt, fees or commissions payable to Agency for media planning and buying services are in addition to, and not inclusive of, Agency's fees for other services which may be listed in the SOW, such as design, branding, development, strategy, consultancy, user experience, hosting, and content distribution and syndication.

In order to avoid miscommunication, the Client shall appoint a sole representative with full authority to provide or maintain any necessary information and approvals that may be required by Agency (the "Client Representative"). The Client Representative shall be responsible for coordination and review of the Agency's services and notifying Agency of Client instructions, change orders and approvals. The signature or e-mail approval of the Client Representative shall be final and binding on Client. If after the Client Representative

has approved a piece of work (e.g. a design, wireframe or piece of copy), the Client or any authorised person alters the scope of work or requires additional services, the Client shall pay all fees and expenses arising from such changes and additional services as set forth in section 1 above.

5. CLIENT OBLIGATIONS AND MATERIALS

The Agency's ability to perform its obligations under this Agreement may be dependent on the Client fulfilling its obligations. The Agency shall not be liable for any costs, charges or losses sustained by the Client arising directly from any failure of the Client to fulfil its obligations under this Agreement.

The Client will be needed to provide structured and helpful feedback throughout the process. Delays in feedback and lack of client availability will lead to the project being rescheduled at Agency's sole discretion.

All copy, where needed, provided by the Client shall be in electronic, Macintosh-compatible format suitable for typesetting. Where photographs, illustrations or other visual materials are provided by the Client, they shall be of professional quality and in a form suitable for reproduction without further preparation or alteration. The Client shall pay all fees and expenses required to bring nonconforming materials up to such standards. The Client warrants that all assets, concepts, materials, specifications, information and instructions provided by Client or its agents may be exploited pursuant to this Agreement and any applicable Statement of Work, including on the Internet, without violating any laws and without violating or infringing any rights of any third parties.

6. APPROVAL OF WORK

Work will not commence until the signed SOW has been received. Within fifteen business days following receipt of any deliverables, the Client will provide Agency with either (a) written approval and acceptance of such deliverable (which will not be unreasonably withheld), or (b) a written list of reasonable modification guidelines that will bring the deliverables into compliance with the SOW. Each deliverable hereunder will be deemed accepted by the Client if, within fifteen business days of its delivery to the Client, the Client does not receive the foregoing written notice.

The Client's written approval of any deliverables, materials, plans or other Work created or produced by the Agency in the course of the provision of the Services, or any cost estimate, will constitute the Agency's authority to purchase, publish, and make contracts for talent, space, time and other facilities and otherwise to do any other act or thing which the Agency considers it reasonable to do in order to carry out its obligations under this Agreement or any Statement of Work.

The Agency will not be obliged to commit to any expenditure on behalf of the Client without first receiving written confirmation of the Client's instructions and the Agency will not be responsible for the consequences of any delay on the part of the Client in providing such

written confirmation.

7. SUPPLIERS

Unless otherwise stated in this Agreement or agreed by the parties in writing, the Agency's contracts with suppliers in respect of the Services shall be made in accordance with suppliers' standard terms or such other terms as the Agency is able to negotiate with the relevant supplier.

The Agency shall act as principal in all such contracts, but all rights and liabilities as between the Client and the Agency shall correspond to those between the Agency and the various suppliers under such conditions, including in particular any service levels and any rights of amendment, omission and cancellation. The Agency shall use reasonable efforts to procure best commercial terms for the Client, and on the Client's written request the Agency shall supply the Client with the relevant terms and conditions.

Notwithstanding the above, unless the parties agree to different arrangements in writing, the Agency shall negotiate with any talent or celebrities (if applicable) on behalf of the Client, but the Client shall contract with such suppliers directly in order to derive maximum benefit from the relationship.

8. LEGAL CLEARANCES AND INDEMNIFICATION

The Client is responsible for obtaining all legal clearances required for the performance of services hereunder. The Client shall indemnify, defend (at its own cost and expense) and hold Agency and its officers, employees and agents harmless from and against any and all claims, suits, demands, damages, losses and expenses arising from any breach, misrepresentation or other act or omission of the Client.

9. LIABILITY OF AGENCY

Agency shall not be held responsible for delays or nonperformance caused by activities or factors beyond its reasonable control, including delays and nonperformance caused by viruses, denial of service attacks, other acts or omissions by third parties, Internet service providers, the Client or its contractors, strikes, lockouts, work slowdowns or stoppages, accidents, fires, acts of God, terrorism, failure by the Client to timely furnish information or approve or disapprove work, or faulty performance by the Client or others, including third-party contractors hired by Agency or by Client. Agency shall not be liable for any indirect, third-party, incidental, special, consequential, exemplary or punitive damages arising out of this Agreement. Agency's maximum liability under this Agreement shall not exceed the total fees received by it hereunder.

10. CONFIDENTIAL-INFORMATION; NON-SOLICITATION

Confidential information is that which relates to the Client's or Agency's research, development, trade secrets or business affairs and includes, in the case of Agency's confidential information, concepts presented to, but not selected by, the Client; it does not

include information that is generally known or easily ascertainable by third parties. Agency and the Client shall mutually respect and maintain each other's confidential information and shall use it only to perform their respective obligations hereunder. For the avoidance of doubt, confidential information does not include information which is public knowledge, was in the recipient's possession before receipt or is independently developed by the recipient. Neither party shall solicit the other's employees, independent contractors or consultants or engage them in any work independent of the parties' relationship under this Agreement during the term of the Agreement and for two years thereafter.

11. RIGHTS, OWNERSHIP AND USAGE

Subject to Agency's receiving full payment under this Agreement, Agency assigns to the Client, without representation or warranty, all rights, title and interest Agency may have in any work specifically created by Agency for the Client pursuant to this Agreement, except that:

(a) Agency may use and distribute such work as part of its portfolio for promotional purposes;

(b) Agency shall own and retain all rights to any and all concepts, ideas, designs, code, proposals and other work and materials (collectively, "Work") which have been presented to the Client but not included in the final work product;

(c) Agency shall own and retain all rights to any technology, technical documentation, inventions, algorithms, software, architecture, logic, navigation, 3d modeling files, animation files and other source files for front-end deliverables, computer programs, source codes, game engines or other backend and background elements, files and features incorporated into or utilised by the Work (collectively, "Background Technology"). Unless the parties agree otherwise in a written and signed Statement of Work, Agency shall retain ownership of any and all Background Technology, including any and all associated intellectual property rights. Agency hereby grants to Client a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to use, reproduce, distribute, display and perform Agency's Background Technology, in compiled machine readable object code form only, to the extent incorporated into deliverables provided hereunder strictly for the purposes and in the territories set out in the applicable Statement of Work. Use of Background Technology for any other project, on any other website or in any other medium shall be subject to additional fees and licenses which may be granted or withheld by Agency in its sole discretion; and

(d) If the Client desires to utilise any of the Work, whether accepted or rejected by the Client hereunder, for any marketing campaign, promotion, product, service, advertisement or any other purpose outside the scope of this Agreement, then the Client shall hire Agency to design, create, develop, market and otherwise implement such work. The Client may solicit or hire a third party to implement such Work if, and only if, Agency declines to do so and such third party is hired on terms in no way more beneficial than the terms first offered to Agency.

(e) Subject to the services provided hereunder, Agency shall retain all rights to any illustrations and other proprietary artwork, if any, listed in any SOW (each item, a "Design"),

provided that Agency shall not, without the Client's prior written consent, use, license, sell or otherwise authorise the use of any Design for use in connection with the marketing or promotion of any consumer product, in any format or medium, electronic or otherwise, for a period of one year from the date on which such Design is first published. Except as otherwise set forth in this Section 11, Agency grants Client the limited, exclusive, irrevocable right to use the Designs as set forth in any SOW.

12. HOSTING

In addition to all other services set forth herein, Agency may provide the Client with hosting services in accordance with the Hosting terms set forth in the SOW. In consideration for such hosting services, the Client shall pay Agency the Monthly Hosting Fee set forth in the SOW.

13. USER ACCEPTANCE TESTING

In projects that include development of technologies the client will be provided the opportunity to test the software (e.g. website, mobile application) before the work is handed over. Any bugs should be reported in writing within 30 working days. All bugs reported will be fixed within the scope of work. Bugs reported outside of the 30 working day window will be fixed at Agency's sole discretion.

Note, if during the user acceptance period any third party software (e.g. Wordpress) is updated, those updates will not be installed as part of the project's scope of work unless agreed by both parties in writing.

14. TERM AND TERMINATION

Either party may terminate this Agreement for any reason upon giving 90 days' prior written notice to the other. Upon termination of this Agreement by Client without Agency's fault or consent, Client shall pay Agency, in addition to all of the fees earned by Agency pursuant to the terms hereof, an early termination fee equal to 40% of the total remaining fees payable to Agency hereunder (as specified in the SOW), plus any and all expenses and third-party costs reasonably incurred by Agency through the effective date of cancellation. At Agency's election, Client's delay of work under this Agreement for a cumulative period of more than 30 days without Agency's fault or consent shall be considered a termination of this Agreement by Client within the meaning of the immediately preceding sentence. If Client desires to terminate this Agreement due to Agency's fault, Client shall give Agency written notice detailing the nature of Agency's fault and possible remedies, whereupon Agency shall have a reasonable period of time (but in no event less than 30 days) to cure such fault.

15. GOVERNING LAW; JURISDICTION

This Agreement shall be interpreted and construed in accordance with the laws of England and Wales, without regard to any conflict of laws principles.

16. NOTICES

Any and all notices required or permitted hereunder shall be sent by certified mail, return receipt requested, to the address of the party for which intended, set forth below its signature hereto and, in the case of the Agency. Notice provided in any other form must be mutually agreed as received and accepted.