



# Consultancy Terms of Business

## 1 Interpretation

1.1 In these Terms of Business the following expressions have the following meanings:

<b>Client</b>	means the client referred to in the Engagement Proposal, being the client for whom WDM has agreed to provide the Services
<b>Contract</b>	means the contract between WDM and the Client for provision of the Services, comprising these Terms of Business and the Engagement Proposal
<b>Data Protection Laws</b>	means the UK GDPR and any legislation implemented in connection with it, the Data Protection Act 2018, the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019 No. 419) and any other applicable laws relating to privacy and data protection.
<b>Engagement Proposal</b>	means an engagement proposal, letter, project plan, specification or other similar document which has been issued by WDM and describes particular services that WDM is willing to provide for a particular client
<b>Intellectual Property</b>	means copyright, patents and all other intellectual property rights of any nature whatsoever, whether registered, capable of registration or not, in any part of the world and including all applications and the right to apply for any such rights
<b>Representative</b>	means any individual assigned by WDM to provide particular Services (whether a director, employee or consultant of WDM or otherwise)
<b>Services</b>	means the services that WDM has agreed to provide to the Client, as more particularly described in the Engagement Proposal
<b>UK GDPR</b>	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018..
<b>WDM</b>	means W.D.M Limited (company number 00403583)
<b>Works</b>	means any reports, plans or other data, documents, information or materials (in whatever form) provided, developed or created by WDM in connection with the Services

1.2 In these Terms of Business, unless the context otherwise requires:

- 1.2.1 any phrase introduced by the terms 'include', 'including', 'particularly' or 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.2 the headings are for convenience only and are not to affect the interpretation of these Terms of Business.

## 2 Scope of contract

- 2.1 The Contract shall constitute the entire agreement and understanding between the parties (superseding any previous agreements) in relation to the provision of the Services by WDM to the Client and shall govern the contractual relationship between the parties to the exclusion of any separate terms and conditions put forward by the Client. No conduct by WDM shall be deemed to constitute acceptance of any terms put forward by the Client, other than to the extent expressly set out in the Contract or subsequently agreed under clause 2.4 below. Any instruction given by the Client to WDM to proceed with the provision of the Services shall be treated as constituting an acceptance by the Client of these Terms of Business and the terms set out in the Engagement Proposal.
- 2.2 In the event of any conflict or ambiguity between these Terms of Business and the relevant Engagement Proposal, the Terms of Business shall prevail over the Engagement Proposal except for any provisions in the Engagement Proposal described as 'special conditions' or otherwise expressly stated to vary or prevail over a particular provision in the Terms of Business.
- 2.3 The Client acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon, and does not have any remedy in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contract.
- 2.4 No variation to the Contract shall be binding on WDM unless made in writing and signed by an authorised representative of WDM.

### **3 Supply of services**

- 3.1 WDM shall supply and the Client shall pay for the Services subject to and in accordance with the Contract.
- 3.2 The Client shall provide or make available to WDM at the times set out in the Engagement Proposal or otherwise in a timely manner in accordance with any reasonable directions given by WDM such co-operation, assistance, accurate information and materials and safe access to site or premises and facilities as may reasonably be required by WDM from time to time in connection with the provision of the Services.

### **4 Confidentiality and data protection**

- 4.1 Each party shall safeguard and keep confidential the terms of the Contract and any and all confidential information that it may acquire in relation to the business or affairs of the other party. Neither party shall use or disclose the other party's confidential information, except to the extent that such use or disclosure is necessary for the purposes of performing its obligations or exercising its rights under this Contract. Each party shall ensure that its officers and employees and any other persons to whom the other party's confidential information is disclosed comply in respect of that information with the provisions of this clause 4.
- 4.2 The obligations on a party set out in clause 4.1 shall not apply to any information to the extent that such information:
  - 4.2.1 is publicly available or becomes publicly available through no act or omission of that party;
  - 4.2.2 is required to be disclosed by law.
- 4.3 The Client shall comply with its obligations under the Data Protection Laws in relation to any personal data which it may make available to WDM in connection with the provision of the Services by WDM. WDM shall comply with any obligations which it may have under the Data Protection Laws in relation to any personal data obtained by it in the course of providing the Services.
- 4.4 The provisions of this clause 4 shall survive any termination of the Contract.

### **5 Intellectual property**

- 5.1 In producing any Works for the Client, WDM shall not knowingly infringe the Intellectual Property of any third party, but does not guarantee that the Works and/or their use by the Client (to the extent permitted by the Contract) will not infringe the Intellectual Property of a third party.
- 5.2 Unless otherwise specified in the Contract, the Intellectual Property in all Works shall belong to the WDM, but to the extent that WDM has agreed to make available any such Works to the Client as part of the Services:
  - 5.2.1 the Client shall be entitled to use such Works for those of its own internal purposes anticipated by the Contract; and
  - 5.2.2 the Client shall not provide or make available any Works to any third party without the express prior written consent of WDM.
- 5.3 If the Contract specifies that certain Works are to belong to the Client (subject always to clause 5.1 above) then:
  - 5.3.1 WDM shall not be deemed to have assigned the Intellectual Property in such Works to the Client unless and until the Client has paid WDM in full for all Services attributable to the production of those Works; and
  - 5.3.2 for the avoidance of doubt, nothing in the Contract shall be deemed to prohibit or restrict WDM from re-using or exploiting for whatever purpose it thinks fit any generic expertise or know-how acquired by it or its Representatives in the course of providing the Services.
- 5.4 To the extent that the Client makes available any Works to any third party (either where WDM has given its permission for this or where the Works belong to the Client pursuant to clause 5.3 above), the Client shall ensure that the relevant third party is made aware that any use of such Works by the relevant third party is at its own risk and that WDM does not owe any duty of care or otherwise accept any responsibility to that third party in connection with the Works in question.

### **6 Fees and payment arrangements**

- 6.1 The Client shall pay to WDM:
  - 6.1.1 the fees stated in the Engagement Proposal; and
  - 6.1.2 unless otherwise stated in the Engagement Proposal, all travel, accommodation, subsistence and other expenses reasonably incurred by WDM in providing the Services; plus any value added tax on such fees and expenses, if applicable.
- 6.2 WDM shall be entitled to invoice the Client for the fees, expenses and tax described at clause 6.1 above, together with any other sums payable under the Contract:
  - 6.2.1 at the times specified in the Engagement Proposal; or
  - 6.2.2 if no such times are specified, on completion of the Services or monthly in arrears (that is to say, at any time after the end of each calendar month in respect of Services provided during that month), whichever is the earlier.
- 6.3 Each invoice raised by WDM shall be payable by the Client without set-off, counterclaim or deduction of any

kind and within such payment period as is specified in the Engagement Proposal, or if no such period is specified, within 30 days of receipt by the Client.

- 6.4 In the event that any sum payable under the Contract is not paid by the due date for payment, WDM shall be entitled (but without prejudice to any other right or remedy it may have):
- 6.4.1 to charge the Client interest on the amount outstanding from time to time at the rate per annum of 4% over the base rate of Barclays Bank plc applicable at the due date, such interest to accrue on a daily basis from the due date until the date of payment in cleared funds (whether before or after the date of any judgement); and/or
- 6.4.2 to suspend the further provision of any Services to the Client until the sum in question has been paid in full.

## **7 Liability**

- 7.1 WDM shall provide the Services using reasonable care and skill, but unless otherwise expressly stated in the Engagement Proposal, WDM does not give any other warranty or similar assurance in respect of any Services provided under the Contract, and all warranties, conditions or other terms implied by statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 7.2 Where the Engagement Proposal envisages that particular Services are to be provided by particular dates or within particular timescales, WDM shall use its reasonable endeavours to meet such dates or timescales, but time shall not be of the essence.
- 7.3 In respect of any claim by the Client relating to the provision of the Services (whether for breach of contract, negligence or otherwise), the Client shall notify WDM in writing (giving full details of the claim) within twelve (12) months of the date on which the Services in question were or should have been provided, and shall afford WDM a reasonable opportunity to remedy the breach or failure in question, failing which all liability in respect of such claim shall be excluded.
- 7.4 WDM shall not be liable to the Client in respect of, and shall not be deemed to be in breach of the Contract as a result of, any failure or delay in complying with its obligations under the Contract to the extent that such failure or delay is caused by:
- 7.4.1 any failure on the part of the Client to comply with its own obligations under the Contract; and/or
- 7.4.2 any circumstances beyond the reasonable control of WDM, including (but specifically not limited to) the sickness or incapacity of any Representatives or other personnel.
- 7.5 WDM shall not be liable to the Client (whether for breach of contract, negligence or otherwise) for any:
- 7.5.1 loss of or corruption to data or computer files; or
- 7.5.2 loss of anticipated savings or revenues; or
- 7.5.3 loss of profits (whether actual or anticipated); or
- 7.5.4 loss of contracts or business opportunities; or
- 7.5.5 loss of goodwill or damage to reputation; or
- 7.5.6 indirect, special or consequential loss or damage; or
- 7.5.7 loss arising from any claim made by any third party to the extent relating to or comprising any loss or damage of the kind referred to in the previous parts of this clause;
- which arises out of or in connection with the Contract.
- 7.6 The total aggregate liability of WDM under or in connection with the Contract shall not in any event exceed the following limits
- 7.6.1 for any and all claims in respect of which WDM's liability is covered by professional indemnity insurance, the sum of £500,000 (five hundred thousand pounds). This figure has been carefully selected as a reasonable allocation of the overall level of insurance cover that WDM anticipates it is likely to have in place from time to time; or
- 7.6.2 for all other claims, an amount equal to the total fees payable under the Contract.
- 7.7 The Client's remedy in respect of any issue or claim relating to the Services (whether for breach of contract, negligence or otherwise) is against WDM and accordingly none of the Representatives or any other individuals employed or engaged by WDM directly or indirectly in relation to the Services shall be liable personally to the Client in relation to any negligence in the provision of the Services or otherwise under or in connection with the Contract.
- 7.8 Nothing in the Contract shall operate to limit or exclude the liability of WDM to the Client for any death or personal injury caused by the negligence of WDM or any of its employees or agents, or for any other matter in respect of which liability cannot lawfully be limited or excluded.

## **8 Duration and termination**

- 8.1 Unless terminated early under clause 8.2, the Contract shall continue in force until:
- 8.1.1 the Services have been completed; or
- 8.1.2 the Contract has been terminated by WDM after giving to the Client at any time not less than 30 days notice of termination (or such other period of notice as may be specified in the Engagement Proposal).
- 8.2 Either party may terminate the Contract immediately by giving written notice to that effect to the other party at

any time after the occurrence of any of the following events:

- 8.2.1 the other party makes any voluntary arrangement with its creditors or (being an individual or a firm) becomes bankrupt or (being a corporate entity) enters administration or goes into liquidation (otherwise than for the purposes of solvent amalgamation or reconstruction); or
  - 8.2.2 a security holder takes possession, or a receiver or administrative receiver is appointed, over all or any material part of the property or assets of the other party; or
  - 8.2.3 anything analogous to any of the foregoing occurs to the other party under the law of any jurisdiction; or
  - 8.2.4 where the other party is the Client, it ceases or threatens to cease to carry on business; or
  - 8.2.5 the other party commits a material breach of any of the provisions of this Contract and in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice specifying the breach and requiring it to be remedied.
- 8.3 For the purposes of clause 8.2.5 above, but without prejudice to the generality of that clause, the Client shall be treated as having committed a material, irremediable breach of the Contract (creating a right for WDM to terminate the Contract immediately) in the event that it fails on more than one occasion to pay by the due date for payment any sum invoiced by WDM and/or fails to pay any one sum invoiced by WDM within 30 days after the due date for payment.
- 8.4 Any termination of the Contract shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after such termination and in particular (but without limitation) the following clauses shall continue in full force and effect in accordance with their terms:
- 8.4.1 clause 4 (Confidentiality & Data Protection);
  - 8.4.2 clause 7 (Liability).
- 8.5 Following termination of the Contract for whatever reason, and unless otherwise expressly agreed by WDM in writing at the time, WDM shall cease to be under any obligation to provide any further Services to the Client.

## 9 General

- 9.1 Any notice under the Contract shall be in writing and shall be sent by pre-paid, first class, recorded delivery post or hand delivery to the address for the relevant party as stated in the Contract or otherwise notified to the other party for this purpose. Any such notice shall be deemed to have been duly received (provided it was sent to the proper address):
- 9.1.1 if despatched by first class, recorded delivery post - 48 hours from the time of posting (subject only to any delays caused by industrial action affecting the postal service);
  - 9.1.2 if delivered by hand - at the time of actual delivery;
- provided in each case that if the deemed receipt time occurs either on a day that is not a working day or after 5.00pm on a working day, then the notice shall not in fact be deemed to have been received until 10.00am on the next following working day.
- 9.2 The Client shall not be entitled to assign, sub-contract or otherwise dispose of any of its rights or obligations under the Contract without the prior written consent of WDM.
- 9.3 No delay or failure on the part of either party in enforcing any provision in the Contract is to be treated as a waiver or as having created a precedent or in any way as having prejudiced that party's rights under the Contract. The rights and remedies provided in the Contract are cumulative and are additional to any rights or remedies provided by law.
- 9.4 If any provision in the Contract is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, such provision shall to the extent of such invalidity or unenforceability be treated as severable and all other provisions of the Contract not affected by such invalidity or unenforceability shall remain in full force and effect.
- 9.5 Nothing in the Contract shall confer any rights on any person under the Contracts (Rights of Third Parties) Act 1999, with the exception of clause 7.7 which shall be enforceable directly by any Representative or other individual of the kind referred to in that clause. The Contract may nonetheless be varied, rescinded or terminated without the consent of any Representative or other such individual.
- 9.6 The Contract and any dispute or claim, including a dispute or claim of a non-contractual nature, arising under or in connection with the Contract shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.