

TERMS AND CONDITIONS FOR PROVISION OF SERVICES (EXCLUDING EQUIPMENT INSTALLATION) BY BIG SKIES LIMITED

BACKGROUND:

Big Skies Limited (the “**Company**”) provides design, development, sourcing, project management, survey, data collation and data management services to business clients. These **Terms and Conditions** shall apply to the provision of services by the Company to its clients. They do not apply to the sale of goods and provision of associated installation services by the Company, which are covered by a separate document for the purpose.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
 - 1.1.1. “**Agreement**” means the agreement entered into by the Company and the Client incorporating these Terms and Conditions, the Quotation and the Order (or variations thereof agreed upon by both Parties) which shall govern provision of the Services;
 - 1.1.2. “**Business Day**” means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
 - 1.1.3. “**Client**” means the party procuring the Services from the Company who shall be identified in the Agreement;
 - 1.1.4. “**Commencement Date**” means the date on which provision of the Services will commence, as defined in the Agreement;
 - 1.1.5. “**Confidential Information**” 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);
 - 1.1.6. “**Fees**” means any and all sums due under the Agreement from the Client to the Company, as specified in the Agreement;
 - 1.1.7. “**Order**” means an official purchase order or instruction to proceed with the Services from a person authorised to raise such an order or give such instruction on behalf of the Client;
 - 1.1.8. “**Quotation**” means the quotation supplied by the Company and any amendment thereto agreed by the Company in writing.
 - 1.1.9. “**Services**” means the services to be provided by the Company to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement; and
 - 1.1.10. “**Term**” means the term of the Agreement as defined therein.

- 1.2. Unless the context otherwise requires, each reference in these Terms and Conditions to:
 - 1.2.1. "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar 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 these Terms and Conditions as amended or supplemented at the relevant time;
 - 1.2.4. a Clause or sub-Clause is a reference to a Clause or sub-Clause of these Terms and Conditions or to a Clause or sub-Clause of the Agreement, as appropriate; and
 - 1.2.5. a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3. The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4. Words imparting the singular number shall include the plural and vice versa.
- 1.5. References to any gender shall include the other gender.
- 1.6. References to persons shall include corporations.

2. QUOTATION

- 2.1. The Quotation supplied by the Company is based on information supplied by the Client at the time of the enquiry. Unless specifically stated the Quotation shall remain open for a period of 30 days from the date of the same. The Client may place an order based on the Quotation within the said 30 day period.
- 2.2. The Company shall have no obligation towards the Client unless and until the Company provides written acceptance of the Client's Order. Any variation from the Quotation must be specifically agreed in writing by the Company.

3. PROVISION OF THE SERVICES

- 3.1. With effect from the Commencement Date, the Company shall, throughout the Term of the Agreement, provide the Services to the Client.
- 3.2. The Company shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the design, development, sourcing, project management, survey, and data management sector in the United Kingdom.
- 3.3. The Company shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services provided in the Agreement.

- 3.4. The Company 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.
- 3.5. The Company may, in relation to certain specified matters related to the Services, act on the Client's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 3.6. The Company shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Client, subject to the Client's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.

4. CLIENT'S OBLIGATIONS

- 4.1. The Client shall use all reasonable endeavours to provide all pertinent information to the Company that is necessary for the Company's provision of the Services.
- 4.2. The Client may, from time to time, issue reasonable instructions to the Company in relation to the Company's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 4.3. In the event that the Company 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 thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.4. If any consents, licences or other permissions are needed from any third parties such as owners of intellectual property, landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 4.5. If the nature of the Services requires that the Company has access to the Client's offices, stores, home or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that the Company has access to the same at the times to be agreed between the Company and the Client as required.
- 4.6. Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of the Company.

5. FEES, PAYMENTS AND RECORDS

- 5.1. The Client shall pay the Fees to the Company in accordance with the provisions of the Agreement.
- 5.2. The Company shall invoice the Client for Fees due in accordance with the provisions of the Agreement.
- 5.3. All payments required to be made pursuant to the Agreement by either Party shall be made in full within 30 days from the end of the month in which the invoice was raised.

- 5.4. All payments required to be made pursuant to the Agreement by either Party shall be made in UK Pounds Sterling in cleared funds to such bank as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- 5.5. Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.6. Without prejudice to sub-Clause 9.4.1 of the Agreement, in the event that payment is not made within the terms of sub-Clause 5.3:
 - 5.6.1. The Company may charge interest at the rate of 8% per annum above the Bank of England base rate on all monies owing from the date when payment was due (a part of the month shall count as a full month for the purposes of calculating interest); and
 - 5.6.2. The Company shall be entitled to make a reasonable charge by way of administration expenses, which in any event shall not be less than the sum of £50 plus VAT, in respect of each invoice unpaid in whole or in part.
- 5.7. Each Party shall:
 - 5.7.1. keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated;
 - 5.7.2. at the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them.

6. LIABILITY, INDEMNITY AND INSURANCE

- 6.1. The Company shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 6.2. In the event that the Company fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 6.3. The Company's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.
- 6.4. The Company shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Company.
- 6.5. Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Company's liability for death or personal injury.
- 6.6. Subject to sub-Clause 6.3 of the Agreement the Company shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of the Company's breach of the Agreement.

- 6.7. The Client shall indemnify the Company against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Company) caused by the Client or its agents or employees.
- 6.8. Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

7. CONFIDENTIALITY

7.1. Each Party undertakes that, except as provided by sub-Clause 7.2 of the Agreement or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and after its termination:

7.1.1. keep confidential all Confidential Information;

7.1.2. not disclose any Confidential Information to any other party;

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

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

7.1.5. 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 sub-Clauses 7.1.1 to 7.1.4 of the Agreement.

7.2. Either Party may:

7.2.1. disclose any Confidential Information to:

7.2.1.1. any sub-contractor or supplier of that Party;

7.2.1.2. any governmental or other authority or regulatory body; or

7.2.1.3. 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 sub-Clause 7.2.1.2 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 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2. use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, 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.

7.3. The provisions of Clause 7 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

8. FORCE MAJEURE

8.1. No Party to the Agreement 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.

8.2. In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for more than 12 months, 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, but the Client shall not be entitled to any damages or compensation whatsoever.

9. TERM AND TERMINATION

9.1. The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of Clause 9 of the Agreement.

9.2. Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than 10 Business Days written notice to the other at any time prior to the expiry of the Term specified in sub-Clause 9.1 of the Agreement (or any further period for which the Agreement is extended) to extend the Agreement for a further period a may be agreed necessary at the time.

9.3. Either Party may terminate the Agreement by giving to the other not less than 20 Business Days written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).

9.4. Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

9.4.1. any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 10 Business Days of the due date for payment;

9.4.2. 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 10 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

- 9.4.3. 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;
 - 9.4.4. 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);
 - 9.4.5. 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);
 - 9.4.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 9.4.7. the other Party ceases, or threatens to cease, to carry on business; or
 - 9.4.8. 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 9, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 9.5. For the purposes of sub-Clause 9.4.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 9.6. 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.

10. EFFECTS OF TERMINATION

10.1. Upon the termination of the Agreement for any reason:

- 10.1.1. any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 10.1.2. 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;
- 10.1.3. 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;
- 10.1.4. subject as provided in Clause 10 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and

10.1.5. each Party shall (except to the extent referred to in Clause 7 of the Agreement) 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.

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, and 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. FURTHER ASSURANCE

12.1. Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

13. COSTS

13.1. Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

14. SET-OFF

14.1. Neither Party shall 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.

15. ASSIGNMENT AND SUB-CONTRACTING

15.1. The Company shall be entitled to perform any of the obligations undertaken by it through any other member of its group or 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 the Company.

16. TIME

16.1. The times and dates referred to in the Agreement shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.

17. RELATIONSHIP OF THE PARTIES

17.1. 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.

18. NON-SOLICITATION

18.1. Neither Party shall, for the Term of the Agreement and for 1 year after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.

18.2. Neither Party shall, for the Term of the Agreement and for 1 year after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

19. THIRD PARTY RIGHTS

19.1. 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.

19.2. Subject to Clause 19 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

20. NOTICES

20.1. 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.

20.2. Notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party **and** shall be deemed to have been duly given:

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

20.2.2. when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.

21. ENTIRE AGREEMENT

- 21.1. 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.
- 21.2. 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.

22. COUNTERPARTS

- 22.1. The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

23. SEVERANCE

- 23.1. In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

24. LAW AND JURISDICTION

- 24.1. The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 24.2. Subject to the provisions of Clause 24 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.