

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).**

## **1. INTERPRETATION**

**The following definitions and rules of interpretation apply in these Conditions.**

### **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 in accordance with Clause 5.

**Commencement Date:** has the meaning given in Clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with Clause 11.5.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

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

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in the Data Protection Legislation.

**Customer:** the person or firm who purchases Services from the Supplier.

**Customer Default:** has the meaning set out in Clause 4.2.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade 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.

**Order:** the Customer's order for Services as set out in the Customer's purchase order form, the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by the Supplier to the Customer.

**Supplier:** Prelim Consulting Limited registered in England and Wales with company number 10864649.

**Supplier Materials:** has the meaning set out in Clause 4.1(h).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.]

### **1.2 Interpretation:**

**(a)** A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

**(b)** Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies at the date of this agreement.

**(c)** 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.

**(d)** A reference to **writing** or **written** includes fax and email.

## **2. BASIS OF CONTRACT**

**2.1** The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

**2.2** The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

**2.3** Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

**2.4** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

**2.5** Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## **3. SUPPLY OF SERVICES**

**3.1** The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

**3.2** The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Supplier's quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

**3.3** The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

**3.4** The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **4. CUSTOMER'S OBLIGATIONS**

**4.1** The Customer shall:

**(a)** ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

**(b)** co-operate with the Supplier in all matters relating to the Services;

**(c)** provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's

premises, office accommodation and other facilities as reasonably required by the Supplier;

**(d)** provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

**(e)** obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

**(f)** comply with all applicable laws, including health and safety laws;

**(g)** keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

**4.2** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

**(a)** without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

**(b)** the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 4.2; and

**(c)** the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **5. CHARGES AND PAYMENT**

**5.1** The Charges for the Services shall be calculated on a time and materials basis:

**(a)** the Charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Supplier's quotation;

**(b)** the Supplier's daily fee rates for each individual are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

**(c)** the Supplier shall be entitled to charge an overtime rate of 25% of the daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in Clause 5.1(b); and

**(d)** the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

**5.2** The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index;

**5.3** The Supplier shall invoice the Customer on completion of the Services or as otherwise set out the Supplier's quotation.

**5.4** The Customer shall pay each invoice submitted by the Supplier:

**(a)** within 15 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

**(b)** in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

**5.5** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

**5.6** If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 9, 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 5.6 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%.

**5.7** All amounts due under the Contract 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).

## **6. INTELLECTUAL PROPERTY RIGHTS**

**6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

**6.2** The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

**6.3** The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 6.2.

**6.4** The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **7. DATA PROTECTION**

**7.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Clause 7, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

**7.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.

**7.3** Without prejudice to the generality of Clause 7.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.

**7.4** Without prejudice to the generality of Clause 7.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:

**(a)** process that personal data only on the documented written instructions of the Customer unless the Supplier

is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

**(b)** ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

**(c)** ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

**(d)** not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

**(i)** the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

**(ii)** the data subject has enforceable rights and effective legal remedies;

**(iii)** the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

**(iv)** the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;

**(e)** assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

**(f)** notify the Customer without undue delay on becoming aware of a personal data breach;

**(g)** at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and

**(h)** maintain complete and accurate records and information to demonstrate its compliance with this Clause 7 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

**7.5** Either party may, at any time on not less than 30 days' notice, revise this Clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## **8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

**8.1** The Supplier has obtained professional indemnity insurance cover in respect of its own legal liability for individual claims not exceeding £250,000 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** The restrictions on liability in this Clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

**8.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

**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 Clause 8.4, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

**8.6** In Clause 8.5:

- (a) **cap**. The cap is the greater of £3,000 and thirty per cent (30%) of the total charges in the contract year in which the breaches occurred;
- (b) **contract year**. A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- (c) **total charges**. The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

**8.7** This Clause 8.7 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to Clause 8.4, the types of loss listed in Clause 8.9(c) are wholly excluded by the parties, but the types of loss and specific losses listed in Clause 8.9(d) are not excluded.
- (b) If any loss falls into one or more of the categories in Clause 8.9(c) and also falls into a category, or is specified, in Clause 8.9(d), then it is not excluded.
- (c) The following types of loss are wholly excluded:
  - (i) loss of profits
  - (ii) loss of sales or business.
  - (iii) loss of agreements or contracts.
  - (iv) loss of anticipated savings.
  - (v) loss of use or corruption of software, data or information.
  - (vi) loss of or damage to goodwill; and
  - (vii) indirect or consequential loss.
- (d) The following types of loss and specific loss are not excluded:
  - (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Services not provided in accordance with the Contract;
  - (ii) wasted expenditure;
  - (iii) additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
  - (iv) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

**8.8** The Supplier has given commitments as to compliance of the Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**8.11** Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. 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 and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

**8.12** This Clause 8 shall survive termination of the Contract.

## **9. TERMINATION**

**9.1** Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party ONE months' written notice.

**9.2** Without affecting any other right or remedy available to it, either party may terminate the Contract 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 and (if such a breach is remediable) fails to remedy that breach within 21 days of that party 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), 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 opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**9.3** 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.

**9.4** Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in Clause 9.2(b) to Clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **10. CONSEQUENCES OF TERMINATION**

**10.1** On termination of the Contract:

**(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 shall submit an invoice, which shall be payable by the Customer immediately on receipt;

**(b)** the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

**10.2** Termination or expiry of the Contract shall not affect any 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.

**10.3** 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.

## **11. GENERAL**

**11.1 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.

### **11.2 Assignment and other dealings.**

**(a)** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

**(b)** The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

### **11.3 Confidentiality.**

**(a)** Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 11.3(b).

**(b)** Each party may disclose the other party's confidential information:

**(i)** to its employees, officers, representatives, 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, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 11.3; and

**(ii)** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**(c)** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### **11.4 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 [or negligent misstatement] based on any statement in the Contract.

**(c)** Nothing in this clause shall limit or exclude any liability for fraud.

**11.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.6 Waiver.** 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. 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.

**11.7 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 Clause 11.7 shall not affect the validity and enforceability of the rest of the Contract.

**11.8 Notices.**

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);

(b) Any notice shall be deemed to have been received:

(i) if delivered by hand, on signature of a delivery receipt; and

(ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

(c) This Clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**11.9 Third party rights.**

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.10 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.

**11.11 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.