

Ruth Dwight Consulting

Terms of Business

Version 1
01 December 2023

AGREED TERMS

1. DEFINITIONS

1.1 In this Terms of Business, the following term have the following meanings:

Expenses	means any fees, costs, expenses and charges reasonably incurred by the Consultant in the performance of the Services, including but not limited to: <ul style="list-style-type: none">a) fees for external professional services;b) the cost of providing facilities;c) costs related to marketing, communication and publicity services;d) charges relating to printing, publishing and copying services; ande) costs of office services.
Group Company	means the Client, or any of its Subsidiaries or Holding Companies from time to time, or any Subsidiary of any such Holding Company from time to time, and Group Companies shall be construed accordingly;
Information	means all information of whatever nature and in whatever form (whether marked 'confidential' or not) concerning the business of the Consultant or the Client or any other Group Company, or any of its or their respective directors, officers, employees and consultants, and which is provided to or comes to the knowledge of the other Party during the course of or in connection with the provision or proposed provision of the Services, including but not limited to know-how, precedents, opinions, advice, secret or confidential operations, trade secrets, databases, documents or files, processes or dealings or any information in any way relating to the organisation, business, finances, transactions or affairs of the Consultant, any Group Company, Consultancy Agreement and these Terms of Business;
Intellectual Property Rights	means patents, rights to Inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;

Inventions	means any invention, idea, discovery, development, improvement or innovation, whether or not patentable or capable of registration, and whether or not recorded in any medium;
Parties	means the Client and the Consultant;
Party	means either one of the Client or the Consultant;
Services	as detailed in signed Consultancy Agreement;
Consultancy Agreement	A separate signed and dated document defining services and fee schedule;
Subsidiary and Holding Company	In relation to a company, means, respectively, 'subsidiary' and 'holding company' as defined in section 1159 Companies Act 2006.

1.2 Any reference in the Consultancy Agreement and these Terms of Business to:

- a) one gender includes a reference to all genders;
- b) a clause is, except where expressly stated otherwise to a clause of these Terms of Business;
- c) any statute is to that statute as from time to time amended, re-enacted or replaced and to all instruments, orders and regulations under it; and
- d) the singular includes the plural and vice versa.

1.3 Any additional terms will be defined in accompanying Consultancy Agreement.

2. PROVISION OF SERVICES

2.1 The Client shall engage the Consultant to provide the Services as agreed in the Consultancy Agreement subject to the terms of these Terms of Business, until the Consultancy Agreement is terminated in accordance with **Clause 8**.

2.2 The Services shall be performed at a location determined by the Consultant and notified to the Client a reasonable period prior to commencement of the Services.

2.3 Should the Client require the Consultant to provide further services ("**Additional Services**"), those services shall be governed by the provisions of these Terms of Business also.

3. SERVICE STANDARD

3.1 The Consultant shall use reasonable care and skill in performing the Services.

- 3.2 During the term of the Consultancy Agreement, the Consultant shall (and shall procure that any Substitute appointed in accordance with **Clause 5** shall), when providing the Services devote the necessary time and attention to the provision of the Services to ensure that they are properly performed.
- 3.3 If the Consultant fails to perform any part of the Services in all material respects in accordance with this Terms of Business in circumstances in which **Clause 11.3** does not apply, if so requested by the Client within 6 months of such failure the Consultant will re-perform the relevant part of the Services in all material respects as aforesaid within such period as is reasonable in relation to such failure. In the event of such a request and in the event that such a failure would otherwise be covered by **Clause 8.2(a)**, **Clause 8.2(a)** shall not apply in relation to such failure until after the end of such reasonable period and shall only apply then if such failure has not been remedied in all material respects by the end of such reasonable period.
- 3.4 The Consultant provides no undertaking that the Services or any objectives thereunder will be obtained or achieved by a date provided in the Consultancy Agreement, these Terms of Business or elsewhere. The Services shall be performed at such times as the Consultant shall in its sole discretion decide, in accordance with the requirements set out in these Terms of Business. Any times, dates or periods provided in the Consultancy Agreement or these Terms of Business for provision of the Services are estimates only and the Consultant will make reasonable efforts to comply with any such time estimates. However, time is not of the essence in respect of the Consultant's performance of the Services.
- 3.5 The Consultant shall provide the Client with such information in relation to the Services as the Client shall reasonably require from time to time.

4. THE CLIENT'S OBLIGATION

- 4.1 During the term of the Consultancy Agreement and in line with these Terms of Business, the Client shall when procuring the Services cooperate fully with the Consultant. Such cooperation shall include, but is not limited to:
- a) complying with such reasonable requirements of the Consultant for the provision of information, documentation, support and assistance as are necessary for performance of the Services;
 - b) ensuring that the Client's employees, workers, agents and representatives cooperate with the Consultant at all times; and
 - c) paying any and all sums due under the Consultancy Agreement and in line with these Terms of Business on time.
- 4.2 The Client undertakes that any information it provides to the Consultant in relation to the Services is accurate and complete.
- 4.3 The Client will pay within five working days following a demand therefor from the Consultant any additional Expenses reasonably incurred by the Consultant as a result of the Client's failure to comply with any or all of the obligations set out in this **Clause 4**.

5. RIGHT OF SUBSTITUTION

- 5.1 The Consultant may appoint a suitably qualified and skilled substitute to perform all or part of the Services (a Substitute).

6. RIGHT TO USE A THIRD PARTY FOR ADMINISTRATION

- 6.1 The Consultant use a third party, other than any Substitute, to carry out administrative duties in connection with the Services, provided that the Consultant shall (i) be entirely responsible for the remuneration of any such third party and (ii) procure that any such third party complies with the confidentiality obligations in Clause 13 of these Terms of Business.

7. FEES, EXPENSES AND TAXES

- 7.1 In consideration of the Consultant and/or the Substitute performing the Services, the Client shall pay the Consultant a fee (the **Fee**) as per the schedule confirmed in the Consultancy Agreement.
- 7.2 The fee for any Additional Services required in accordance with **Clause 2.3** shall be subject to negotiation by the Parties.
- 7.3 If valid and correct, any issued invoice delivered by the Consultant to the Client shall be due and payable within 14 days after the date on which it is delivered.
- 7.4 The Consultant is not required by law to be registered for VAT and is not so registered.
- 7.5 The Fee is not refundable and the Client shall not be entitled to deduct from any fee payable to the Consultant any sums that the Consultant may owe to the Client or Group Company at any time.
- 7.6 The Consultant may also claim any out-of-pocket expenses incurred by them or any properly appointed Substitute in performing the Services.
- 7.7 Any sums due under this **Clause 7** shall be payable by such method and at such time as the Consultant shall reasonably require.
- 7.8 In the event that any sum payable under the Consultancy Agreement and these Terms of Business is not paid by the Client by the due date, the Consultant shall be entitled to charge interest on such overdue amount on a daily basis until payment is made in full at a rate equal to 2% above the base rate of the Bank of England in force at that time.
- 7.9 The Client will not refuse to pay any amount which is owed to the Consultant where there is only a minor or inconsequential defect or error in the performance of the Services.

8. TERMINATION

- 8.1 Subject to **Clauses 8.2 and 8.3**, the Consultancy Agreement and these Terms of Business shall remain in force until it is terminated by either Party giving the other Party not less than 30 days' written notice.
- 8.2 Notwithstanding **Clause 8.1**, the Client may terminate the Consultancy Agreement and these Terms of Business immediately at any time by written notice to the Consultant (with no obligation to make any other payment other than any Fees and Expenses accrued to the date of termination) in the event that:
- a) subject to **Clause 8.2(b)** or a request for re-performance under **Clause 3.3**, the Consultant commits any serious or persistent default or breach of any obligation under the Consultancy Agreement and these Terms of Business which is either not capable of remedy or which, if capable of remedy, has not been remedied within 21 days of such default or breach having been notified by the Client to the Consultant; or
 - b) the Consultant fails or is unable to provide the Services to the Client for a continuous period of more than a continuous period of three months due to incapacity and a Substitute has not been appointed in accordance with **Clause 5**; or
 - c) the Consultant or any Substitute is convicted of a criminal offence (other than a motoring offence for which a fine or non-custodial penalty is imposed) which materially and adversely affects the provision of the Services or any Group Company's business or reputation; or
 - d) the Consultant is the subject of any bankruptcy proceedings, or has entered into any composition, compromise, assignment or arrangement with all or any class of creditors; or
 - e) the Consultant or any Substitute has committed any act of fraud or dishonesty or has done anything with the intention of bringing any Group Company into disrepute.
- 8.3 Notwithstanding **Clause 8.1**, the Consultant may terminate the Consultancy Agreement and these Terms of Business immediately at any time by written notice to the Client (with no obligation to undertake any further performance of the Services) in the event that:
- a) the Client commits any serious or persistent default or breach of any obligation under the Consultancy Agreement and these Terms of Business, which is either not capable of remedy or which, if capable of remedy, has not been remedied within 21 days of such default or breach having been notified by the Consultant to the Client; or
 - b) the Client fails to pay the Fee, or any part thereof, within 90 days of payment falling due;
 - c) any Group Company is convicted of a criminal offence which materially and adversely affects the provision of the Services or the Consultant's or any Substitute's business or reputation; or

- d) any Group Company is the subject of insolvency proceedings or passes a resolution with a view to its winding up or administration or liquidation or has a receiver appointed over any of its property or assets, or has entered into any composition, compromise, assignment or arrangement with all or any class of creditors; or
 - e) any Group Company has committed any act of fraud or dishonesty or has done anything with the intention of bringing the Consultant or any Substitute into disrepute.
- 8.4 On termination of the Consultancy Agreement and these Terms of Business for whatever reason, the Client shall pay for all of the Services provided and Expenses incurred up to and including the date of termination, and for all Expenses incurred by the Consultant following the date of termination from commitments reasonably and necessarily incurred in relation to the Consultant's performance of the Services prior to termination.
- 8.5 For the avoidance of any doubt, any delay in the exercise of either Party's rights under this **Clause 8** shall not mean that the Party has waived its rights to exercise them.

9. Relationship of the Parties

- 9.1 The relationship of the Consultant to the Client shall be that of an independent contractor. Nothing in the Consultancy Agreement, these Terms of Business or by virtue of its performance shall create or be deemed to create between the Client and the Consultant (or the Client and any Substitute):
- a) a partnership or joint venture; or
 - b) a relationship of principal and agent; or
 - c) a relationship of employer and employee; or
 - d) a relationship of employer and worker.
- 9.2 Neither the Client nor the Consultant shall be entitled to enter into agreements or other arrangements on behalf of the other (or otherwise act as agent for the other).
- 9.3 Neither Party shall refer to or mention the other Party's name to any third party or in any press announcements, advertisements or news articles without the other Party's prior consent (such consent not to be unreasonably withheld or delayed).

10. PROPERTY AND INTELLECTUAL PROPERTY

- 10.1 Any property or Intellectual Property Rights in any material owned by the Consultant shall belong to the Consultant and the Client shall not cause or permit anything to endanger those rights or title, or permit, assist or encourage others to do so.
- 10.2 Any property or Intellectual Property Rights in any material owned by the Client shall belong to the Client and the Consultant shall not cause or permit anything to endanger those rights or title, or permit, assist or encourage others to do so.
- 10.3 **Clauses 10.1 and 10.2** are subject to the right of the Parties to use any such material so far as is reasonably required to carry out the terms of the Consultancy Agreement and these Terms of Business.

- 10.4 The Client warrants that any material, whether comprising documents, data, records or any other materials, that it provides to the Consultant under the terms of the Consultancy Agreement and these Terms of Business does not infringe the Intellectual Property Rights of any third party. The Client agrees to indemnify the Consultant against any loss, damage, cost, expense or claim of any kind that may arise as a result of an infringement.

11. LIABILITY

- 11.1 Except in the case of death or personal injury caused by the Consultant's negligence, the liability of the Consultant under or in connection with the Consultancy Agreement and these Terms of Business however so arising shall not exceed the Fee.
- 11.2 Neither Party will be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any form of indirect, consequential or special loss, including without limitation any economic loss or other loss of turnover or profits, loss or corruption of any data, database or software, loss of business, contracts or commercial opportunities or any other form of pure economic loss. This clause shall not apply to **Clause 12.1**.
- 11.3 Neither Party shall be liable to the other or be deemed to be in breach of the Consultancy Agreement and these Terms of Business for any delays or failures in performance of this Agreement due to circumstances beyond the reasonable control of that Party. Such circumstances include – but are not limited to – industrial action, lock out, trade dispute, accident, fire, flood, natural disaster, power failure or internet service provider failure. As soon as reasonably possible after the discovery of such circumstances, the affected Party must notify the other Party in writing of any anticipated or existing delay or failure in performance.

12. INDEMNITY

- 12.1 The Client shall indemnify the Consultant from and against all claims and losses arising from loss, damage, liability, injury to the Consultant, its employees and third parties, infringement of third party Intellectual Property Rights or third party losses by reason of or arising out of any information supplied to the Consultant by or on behalf of the Client.

13. CONFIDENTIALITY

- 13.1 The Parties will use their reasonable endeavours to keep confidential any Information relating to the other Party that is provided or otherwise accessed in the performance of the Consultancy Agreement and these Terms of Business. Neither Party shall disclose any Information of the other Party without the consent of the other Party, except in order to comply with law or regulation or the order of a court of competent jurisdiction or as required in connection with legal proceedings relating to or arising out of the Consultancy Agreement and these Terms of Business.
- 13.2 The Parties' obligations under **Clause 13.1** shall continue after termination or completion of the Consultancy Agreement and these Terms of Business unless or until the Information concerned becomes public knowledge or is otherwise in the public domain through no fault of the Party bound to keep its confidentiality under this clause.

- 13.3 For the avoidance of doubt, the restrictions in the Consultancy Agreement and these Terms of Business shall not apply to any Information that was known by or in the possession of either Party prior to it being provided during the course of the performance of the Services.
- 13.4 The Client acknowledges that the Consultant will use and rely on the Client's Information and other Information available from public and non-public sources in performing the Services. The Consultant does not assume any responsibility for the truthfulness or accuracy of any Information provided to it by the Client.

14. CONFLICTS OF INTEREST

- 14.1 Nothing in the Consultancy Agreement and these Terms of Business shall prevent the Consultant or any Substitute from providing services to or undertaking any other business or profession or being or becoming an employee, consultant, or agent of or adviser to any other company, firm or person, or assisting or having any financial interest in any other business or profession.

15. DATA PROTECTION

- 15.1 The Client consents to the holding and processing both electronically and manually of any data (including sensitive personal data as defined by the Data Protection Act 2018) which relates to the Client or any other Group Company or any of its or their staff or clients that the Consultant collects in provision of the Services and for compliance with applicable procedures, laws and regulations. The Client consents to the transfer of such personal information to third parties whether or not outside the United Kingdom for administrative purposes and any other purposes where it is necessary or desirable for the Consultant to do so.
- 15.2 The Consultant consents to the holding and processing both electronically and manually of any data (including sensitive personal data as defined by the Data Protection Act 2018) which relates to the Consultant that the Client or any other Group Company collects for the purposes of the administration and management of its business and for compliance with applicable procedures, laws and regulations. The Consultant consents to the transfer of such personal information to other offices that the Client may have or to any other Group Company or to other third parties whether or not outside the United Kingdom for administrative purposes and any other purposes where it is necessary or desirable for the Client to do so.
- 15.3 Both Parties agree to:
- a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of any data relating to the other Party or any of its or their staff or clients and against accidental loss or destruction of, or damage to, any such data;
 - b) process data relating to the other Party or any Group Company or any of its or their staff or clients only in accordance the other Party's instructions; and
 - c) provide to the other Party such information regarding compliance with the requirements of this **Clause 15.3** as that Party may from time-to-time reasonably require to enable it comply with its data protection obligations.

16. NOTICES

- 16.1 Any notice to be given under the Consultancy Agreement and these Terms of Business shall be given in writing and addressed to the Party concerned at the address shown on the Consultancy Agreement (or such other addresses as notified by the Parties in writing from time to time) and may be sent by registered first class post, or personally by hand delivery or courier service. Any such notice shall be deemed duly given as follows: if given personally it shall take effect immediately (irrespective of the time or date of its receipt) or if sent by registered first class post, 48 hours after it is posted.

17. GENERAL

- 17.1 The terms of the Consultancy Agreement and these Terms of Business represent the entire agreement between the Parties and supersede any previous representations or agreements whether recorded in writing or otherwise. Both Parties agree that the terms of the Consultancy Agreement and these Terms of Business are fair and reasonable in all circumstances.
- 17.2 **Clause 13** (Confidentiality) shall survive termination or expiry of the Consultancy Agreement and these Terms of Business. Termination of the Consultancy Agreement and these Terms of Business shall not prejudice or affect the rights of either Party against the other regarding any breach of the Consultancy Agreement and these Terms of Business or in respect of any monies payable by one Party to the other for the period prior to termination or expiry.
- 17.3 The provisions of the Consultancy Agreement and these Terms of Business shall be severable and if any provision of the Consultancy Agreement and these Terms of Business is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 17.4 The Consultancy Agreement and these Terms of Business may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Facsimile and scanned copy signatures shall be valid and binding to the same extent as original signatures.
- 17.5 Other than as provided for in **Clause 5**, neither Party shall be permitted to assign, novate or otherwise transfer any of its rights or obligations under the Consultancy Agreement and these Terms of Business without the other Party's prior written consent.
- 17.6 A person who is not a Party to the Consultancy Agreement and these Terms of Business may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.
- 17.7 The Consultancy Agreement and these Terms of Business shall be governed by, and construed in accordance with, English law and the Parties submit to the exclusive jurisdiction of the English courts for all purposes relating to the Consultancy Agreement and these Terms of Business.