

These Terms and Conditions shall, together with Our Retainer Agreement (if any) and each Assignment Summary issued by Us describing the Service, constitute the whole agreement between You and Grey Cube Design Limited (CRN:11380752) (Us).

## 1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

### 1.1 Definitions:

**Assignment:** has the meaning given to such term in clause 2.2.

**Assignment Summary:** means a summary of the key terms of an Assignment including (without limitation) the description or specification of the Services to be provided, the name of Your customer or client (if relevant), the client project to which the Assignment relates, the location (if fixed) at which the Services are to be provided, the Fee Rate, any special notice period applicable to end the Assignment and any other special terms applicable to the Assignment. The Assignment Summary may be in any form adopted by us from time to time, which may include email.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** the earlier of the date of this agreement and the date on which the first Assignment began.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.6.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

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

**Customer Material:** has the meaning set out in clause 3.5.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the Union has legal effect in the UK) the General Data Protection Regulation (EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**Data Controller:** has the meaning as such term is given in UK Data Protection legislation.

**Data Subject:** an individual who is the subject of Personal Data.

**Deliverables:** Drawings or Simulations produced by Us for You.

**Fee:** the aggregate fee due to Us in respect of an Assignment in accordance with clause 5.

**Fee Rate:** shall mean the daily rate or hourly rate (as applicable) to be applied in calculating the Fee due in respect of an Assignment.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, 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.

**Personal Data:** has the meaning such term is given in UK Data Protection Legislation.

**Processing and process:** has the meaning such term is given in UK Data Protection Legislation.

**Provider Materials:** has the meaning set out in clause 4.1(g).

**Services:** the services, including the Deliverables, supplied by Us to You as set out in the Assignment Summary.

**Us:** Grey Cube Design Ltd registered in England and Wales with company number 11380752.

**You:** as defined in the Assignment Summary.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1.2 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.

1.3 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.

1.4 A reference to writing or written includes faxes and emails.

## 2. TERM OF AGREEMENT AND ENGAGEMENT

2.1 With effect from the Commencement Date, if You engage Us and We agree to provide the Services, the terms of this agreement shall apply.

2.2 Our engagement shall constitute a series of individual requests for the provision of Services (each an Assignment). In addition to the terms set out in this agreement, the further terms applicable to each Assignment shall be set out in the Assignment Summary provided by You to Us prior to commencement of each Assignment.

2.3 You shall have no obligation to offer Us any Assignments, and We shall have no obligation to accept any Assignment offered to Us.

2.4 Acceptance by Us of an Assignment shall constitute acceptance of the same on the terms of this agreement and those set out in the Assignment Summary. Unless We notify You in writing that We do not accept an Assignment offered, We shall be deemed to have accepted an Assignment if We commence the provision of Services in respect of it.

2.5 Both parties agree and intend that the period of time covered by each individual Assignment represents the commencement and termination of an individual contract for Services, and that a new contract for Services will commence on the next occasion an Assignment is accepted by Us.

2.6 The Assignment Summary may be varied from time to time by agreement between You and Us.

2.7 Each Assignment shall commence on the date specified in the Assignment Summary or if no date is stated, when the provision of the Services commence and shall continue unless and until terminated:

(a) as provided by the terms of this agreement; or

(b) by either party giving to the other written notice of not less than the period of notice specified in the Assignment Summary. If the Assignment Summary does not specify a notice period, the notice period shall be one month.

2.8 Any quotation given by Us shall not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue.

## 3. OUR OBLIGATIONS

3.1 We shall supply the Services to You in accordance with the applicable Assignment Summary in all material respects.

3.2 We shall use Our reasonable endeavours to meet any performance dates specified in the Assignment Summary, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 We reserve the right to amend the Assignment Summary 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 We shall notify You in any such event.

3.4 We warrant to You that the Services will be provided using reasonable care and skill.

3.5 We shall:

(a) 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;

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

(c) keep all materials, equipment, documents and other property of You (Customer Materials) held at Our premises in safe custody at Our risk, maintain Customer Materials in good condition until returned to You and not dispose of or use Customer Materials other than in accordance with Your written instructions or authorisation; and

(d) comply with any additional obligations as set out in the Assignment Summary.

## 4. YOUR OBLIGATIONS

4.1 You shall:

(a) ensure that any information You provide in the Assignment Summary is complete and accurate;

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

(c) provide Us, Our employees, agents, consultants and subcontractors, with access to Your premises, office accommodation and other facilities as reasonably required by Us;

(d) provide Us with such information and materials as We 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 of Our materials, equipment, documents and other property (Provider Materials) at Your premises in safe custody at Your own risk, maintain the Provider Materials in good condition until returned to Us and not dispose of or use the Provider Materials other than in accordance with Our written instructions or authorisation; and

(h) comply with any additional obligations as set out in the Assignment Summary.

4.2 If Our performance of any of Our obligations under this agreement is prevented or delayed by any act or omission by You or failure by You to perform any relevant obligation (Customer Default):

(a) without limiting or affecting any other right or remedy available to it, We shall have the right to suspend performance of the Services until You remedy the Customer Default, and to rely on the Customer Default to relieve Us from the performance of any of Our obligations in each case to the extent the Customer Default prevents or delays Our performance of any of Our obligations;

(b) We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Our failure or delay to perform any of Our obligations as set out in this clause 4.2; and

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

## 5. FEES AND PAYMENT

5.1 Unless the Assignment Summary specifies otherwise, the Fees for the Services shall be calculated on a time and materials basis as follows:

(a) The Fee shall be calculated in accordance with Our daily or hourly Fee Rates, as set out in the Assignment Summary;

(b) Our 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) We shall be entitled to charge an overtime rate of 25 per cent of the daily Fee Rate on a pro-rata basis for each part day or for any time worked by individuals whom We engage on the Services outside the hours referred to in clause 5.1(b); and

(d) We shall be entitled to charge You for any expenses reasonably incurred by the individuals whom We engaged 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 Us for the performance of the Services, and for the cost of any materials.

5.2 You shall pay each invoice submitted by Us:

(a) within 14 days of the date of the invoice; and

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

5.3 All amounts payable by You under this agreement 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 this agreement by Us to You, You shall, on receipt of a valid VAT invoice from Us, pay to Us 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.

5.4 If You fail to make a payment due to Us under this agreement by the due date, then, without limiting Our remedies under Clause 9, You 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 5.4 will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

5.5 All amounts due under this agreement 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 Customer Materials) shall be owned by Us.

6.2 We grant to You, or shall procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to copy and modify the Deliverables (excluding materials provided by You) for the purpose of receiving and using the Services and the Deliverables in Your business.

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

6.4 You shall not provide the Deliverables to any other person without an express disclaimer that the Deliverables are not to be relied upon by any person other than You without Our express written consent.

6.5 You grant Us a fully paid-up, non-exclusive, royalty-free, non-transferable perpetual licence to copy and modify any Customer Materials provided to Us for the purpose of providing the Services to You.

## 7. DATA PROTECTION AND DATA PROCESSING

7.1 Both parties acknowledge that for the purposes of the Data Protection Act legislation, You are the Data Controller and We are the data processor in respect of any Personal Data provided by You.

7.2 We shall process the Personal Data only in accordance with Your instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by You.

7.3 We shall take reasonable steps to ensure the reliability of all Our employees who have access to the Personal Data.

7.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

7.5 We warrant that, having regard to the state of technological development and the costs of implementing any measures, We will:

(a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

(i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

(ii) the nature of the data to be protected; and

(b) take reasonable steps to ensure compliance with those measures.

7.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 7.

7.7 You acknowledge that We are reliant on You for direction as to the extent to which We are entitled to use and process the Personal Data. Consequently, We will not be liable for any claim brought by a Data Subject arising from any action or omission by Us, to the extent that such action or omission resulted directly from Your instructions.

7.8 We may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

(a) is on terms which are substantially the same as those set out in this agreement; and

(b) terminates automatically on termination of this agreement for any reason.

## 8. LIMITATION OF LIABILITY

Your attention is particularly drawn to this clause.

8.1 Nothing in this agreement shall limit or exclude Our liability for:

(a) death or personal injury caused by its negligence, or the negligence of Our employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1, We shall not be liable to You, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of damage to goodwill; and

(g) any indirect or consequential loss.

8.3 Subject to clause 8.1, Our total liability to You, whether in contract, tort (including negligence, breach of statutory duty, or otherwise, arising under or in connection with this agreement shall be limited to £100,000.

8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

8.5 This clause 8 shall survive termination of this agreement.

## 9. TERMINATION

9.1 Without affecting any other right or remedy available to it, either party may terminate this agreement by giving the other party one month's written notice.

9.2 Without affecting any other right or remedy available to it, We may terminate this agreement with immediate effect by giving written notice to You if You fail to pay any amount due under this agreement on the due date for payment.

9.3 Without affecting any other right or remedy available to it, We may suspend the supply of Services under this agreement or any other contract between You and Us if You fail to pay any amount due under this agreement on the due date for payment.

## 10. CONSEQUENCES OF TERMINATION

10.1 On termination of this agreement:

(a) You shall immediately pay to Us all of the Our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt; and

(b) You shall return all of the Providers Materials and any Deliverables which have not been fully paid for. If You fail to do so, We may enter Your premises and take possession of them. Until they have been returned, You shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement.

10.2 Termination or expiry of this agreement 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 this agreement which existed at or before the date of termination or expiry.

10.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

## 11. GENERAL

### 11.1 Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 11.2 Assignment and other dealings

# Grey Cube Design Limited

Burton-in-Kendal, Cumbria, LA61NU Company No. 11380752

Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party.

## 11.3 Confidentiality

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, 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 this agreement. 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 this agreement.

## 11.4 Entire agreement

(a) This agreement and Assignment Summary 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 this agreement 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 this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

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

## 11.5 Status

(a) Our relationship to You will be that of independent contractor and nothing in this agreement shall render Us an employee, worker, agent or partner of You and We shall not hold Ourselves out as such.

(b) This agreement and Assignment accepted under it constitutes a contract for the provision of services and not a contract of employment and accordingly We shall be fully responsible for and shall indemnify You for and in respect of:

(i) any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. We shall further indemnify You against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by You in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

(ii) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by Us or any of Our agents, employees or workers against You arising out of or in connection with the provision of the Services.

## 11.6 Variation

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

## 11.7 Waiver

A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under this agreement 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 this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 11.8 Severance

If any provision or part-provision of this agreement 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 shall not affect the validity and enforceability of the rest of this agreement.

## 11.9 Notices

(a) Any notice or other communication given to a party under or in connection with this agreement 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); or sent by email to the address specified in the Assignment Summary.

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 or at the time recorded by the delivery service; or, if sent by fax or email, at instant/next day on the next Business Day after transmission.

(c) This clause 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.

## 11.10 Third party rights

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

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

## 11.11 Governing law

This agreement, including these Terms and Conditions, 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.

## 11.12 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 this agreement or its subject matter or formation.