



## Terms and Conditions

THIS CONTRACT No. [ ] IS MADE ON THE [ ] of [ ] 20[ ]

BETWEEN

**JACKDAW WEB DESIGN**, of The Town Hall, High Street East, Wallsend, Tyne and Wear, NE28 7AT ("Jackdaw");

AND

[ **NAME** ] of [ Address ] registered in [ Country ] under Company Number [ ]. ("Client")

**IT IS HEREBY AGREED AS FOLLOWS:**

### 1. Interpretation

- 1.1. Except where the context requires otherwise, words importing the masculine shall include the feminine; words importing the singular shall include the plural; words importing natural personage shall be equally applicable to corporate personage; and vice versa.
- 1.2. References to any statutory provision, authority, rule or code of practice shall be deemed to include the amended versions, replacements or successors of such.
- 1.3. The following definitions apply in this agreement:

**'Client Property'**: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the business or affairs of the Client or its customers and business contacts, and any equipment, keys, hardware or software provided for Jackdaw's use by the Client during the agreement, and any data or documents (including copies) produced, maintained or stored by Jackdaw on the Client or Jackdaw's computer systems or other electronic equipment during the agreement.

**'Confidential Information'**: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data and know-how relating to the business of the Client or any of its Consultants, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that Jackdaw creates, develops, receives or obtains in connection with this agreement, whether or not such information (if in anything other than oral form) is marked confidential.

**'Intellectual Property'**: all patents, rights to inventions, utility models, copyright and related rights, trade marks, Work marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral 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 for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world as at the date of this agreement or in the future.

**'Proposal'**: a separate written document which shall contain details of the Work to be provided by Jackdaw to the Client, the manner in which Jackdaw shall provide the Work and the basis on which Jackdaw shall be remunerated. The Proposal shall be attached as a Schedule to this agreement and signed or initialled by both parties.

## **2. Relationship Between the Parties**

- 2.1. The Client shall engage Jackdaw and Jackdaw shall provide the Work on the terms of this agreement.
- 2.2. The relationship of Jackdaw to the Client will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Client and Jackdaw shall not hold himself out as such.
- 2.3. Neither party shall assign or transfer any of their rights, liabilities or obligations arising under this agreement without the prior written consent of the other party.

## **3. Term of Agreement**

- 3.1. This agreement will commence on \_\_\_\_\_ and will continue unless and until terminated:
  - 3.1.1. as provided by the terms of this agreement; or
  - 3.1.2. upon satisfactory completion of the Work agreed under the Proposal or any extension or addition to the Work which is agreed in writing; or
  - 3.1.3. by either party giving to the other not less than \_\_\_\_\_ weeks' prior written notice.

## **4. The Work Provided**

- 4.1. Jackdaw shall provide the Work to the client as required and as mutually agreed with all due care, skill and ability and use his best endeavours to promote the interests of the Client.
- 4.2. The exact nature and detail of the Work which Jackdaw shall provide to the Client shall be as set out in the Proposal.
- 4.3. Any amendment, extension or addition to the Work must be agreed in writing.
- 4.4. The Client accepts that the Work shall be supplied on a best endeavours basis and as such Jackdaw makes no guarantee that any particular Work will be delivered within a specific time frame or on any agreed dates and shall not be liable for any loss, damage or expense suffered by the Client as a result of any delay in Work provision.
- 4.5. Jackdaw shall use reasonable endeavours to ensure that he is available at all times on reasonable notice to provide such assistance or information as the Client may require.
- 4.6. Jackdaw shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 4.7. Failure to comply with Clause 4.6 may result in the immediate termination of this agreement.

## **5. Acceptance of Work**

- 5.1. Upon delivery of the Work the Client shall inspect the Work and report any defects or non-conformity to Jackdaw within 7 days. If a response is not received within this time the Client shall be deemed to have unconditionally accepted the Work.

## **6. Reservation of Title**

- 6.1. Full legal and equitable title in the Work and (where it is agreed that the Intellectual Property Rights shall pass to the Client), the Intellectual Property Rights in the Work remains vested in Jackdaw and shall only pass from Jackdaw to the Client upon full payment being made by the Client of all sums (due on whatsoever account or grounds) to Jackdaw.

## **7. Payment for Work**

- 7.1. Where Jackdaw provides Work to the Client as mutually agreed he shall charge the Client the sum agreed in the Proposal.
- 7.2. Unless specified in the Proposal, the sum payable to Jackdaw in respect of the sum as set out in Clause 7.1 is inclusive of any expenses which he may incur.
- 7.3. Jackdaw reserves the right to charge the Client for any additional expenses incurred due to changes to the Contract.
- 7.4. The Client shall settle all invoices which are raised against him by Jackdaw strictly in accordance with the requirements of the Proposal.
- 7.5. Where the Client is late in making payment Jackdaw shall be entitled to recover from him all reasonable costs and expenses incurred in securing payment.
- 7.6. We reserve the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

## **8. Expenses**

- 8.1. Where additional expenses are agreed beforehand, Subject to Clause 7.2 and to production of receipts or other appropriate evidence of payment, the Client shall reimburse all reasonable additional expenses properly and necessarily incurred by Jackdaw in the course of providing the Work under this agreement.
- 8.2. Jackdaw reserves the right to charge to the Client all reasonable travel expenses which are incurred in attending the Client's premises. These shall include rail, air, underground and taxi fares or, where Jackdaw or his employees or agents travel by private car, an allowance of 45p (forty five pence) per mile.

## **9. Client's Obligations**

- 9.1. The Client shall provide Jackdaw with such information, support, co-operation and facilities as may be necessary in order to provide the Work.
- 9.2. The Client agrees and covenants that he will not recruit or attempt to procure the recruitment of any employee of Jackdaw between the signing of this agreement and the expiration of 6 months from the completion of the Work as agreed in the Proposal or any extension or addition to this Work which is agreed in writing.

## **10. Clients Property**

- 10.1. Jackdaw will take all reasonable precautions for the security of property supplied by or belonging to the Client but the same will only be held by Jackdaw at the risk of the Client and no liability is accepted by Jackdaw for the loss, destruction or disposal thereof or damage thereto. It is the responsibility of the Client to insure the same.
- 10.2. At any stage during this agreement, Jackdaw will promptly on request return all and any Client Property in his possession to the Client.

## **11. Confidentiality**

- 11.1. Jackdaw acknowledges that in the course of this agreement he will have access to Confidential Information. Jackdaw has therefore agreed to accept the restrictions in this Clause 11.
- 11.2. Where Jackdaw provides Work to the Client through a delegate such as an employee or subcontractor, Jackdaw will ensure that the said delegate signs a comparable confidentiality undertaking.
- 11.3. Jackdaw shall not (except in the proper course of his duties), either during the term of this agreement or at any time after the termination of this agreement, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- 11.3.1. any use or disclosure authorised by the Client or required by law; or
- 11.3.2. any information which is already in, or comes into, the public domain otherwise than through Jackdaw's unauthorised disclosure.

## **12.Data Protection**

- 12.1. Jackdaw consents to the Client holding and processing data relating to him for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to Jackdaw.
- 12.2. Jackdaw consents to the Client making such information available to those who provide products or Work to the Client.
- 12.3. Without specific written agreement, Jackdaw does not consent to the transfer of such information to the Client's business contacts outside the European Economic Area.

## **13.Intellectual Property**

- 13.1. Where the Client provides Jackdaw with documentation, literary materials or media in order to enable Jackdaw to provide the Work, there shall be no transfer of Intellectual Property vested in these, and the aforementioned Intellectual Property shall remain the sole property of the Client.
- 13.2. Unless otherwise agreed and detailed in the Proposal, all Intellectual Property in the Work provided and delivered to the Client by Jackdaw shall transfer to the Client upon full payment.
- 13.3. Neither the Client nor Jackdaw claim or assert any rights to Intellectual Property belonging to any third party which may be used under licence or otherwise lawfully during the course of this agreement.

## **14.Infringement of Patents, Designs, Copyright and Trade Marks**

- 14.1. Jackdaw, its employees, servants and agents shall not in any circumstances be liable for any loss, liability, penalty or expense suffered or incurred by the Client by reason of any sale, disposition, use or adoption of the Work which constitutes an alleged or actual infringement of a patent, design, copyright or trade mark, foreign or domestic, vested in a third party and Jackdaw gives no warranty that the Work will not infringe as aforesaid.
- 14.2. The Client shall indemnify Jackdaw, its employees, servants and agents against any loss, liability, penalty or expense suffered or incurred by Jackdaw, its employees, servants or agents by reason of any work requiring to be done in accordance with the Client's instructions or the Proposal which constitutes or is alleged to constitute such an infringement.

## **15.Termination**

- 15.1. Without prejudice to Clause 3.1, either party may terminate this agreement with immediate effect without notice if the other party:
  - 15.1.1. expressly or impliedly repudiates this Agreement by refusing or threatening to refuse to comply with any of the provisions of this agreement; or
  - 15.1.2. goes into liquidation either compulsory or voluntary (save for the purpose of reconstruction or amalgamation); or
  - 15.1.3. convenes any meeting of creditors or passes a resolution for winding up or suffers a petition for winding up; or
  - 15.1.4. has an administrative receiver or receiver appointed over the whole or part of its assets or suffers the appointment of an administrator; or
  - 15.1.5. being an individual has a bankruptcy order made against him or is declared en désastre, or compounds with his creditors or comes to any arrangements with any creditors; or
  - 15.1.6. is wound up or a court of competent jurisdiction makes an order to that effect; or

- 15.1.7. commits a material breach of any term of this agreement (and, except in the case of a breach not capable of being remedied), such breach has not been remedied within 30 days of receipt of a written request to remedy the breach; or
  - 15.1.8. is directed to do so by any regulatory authority; or
  - 15.1.9. there is a change in control of such other party and for this purpose "control" shall have the meaning ascribed to it in Section 840 of the Income and Corporation Taxes Act 1988.
- 15.2. The Company reserves the right to terminate this Contract at any point with one months notice at the Company's discretion, if the Client fails to pay fees due under this agreement.
- 15.3. Upon termination of this agreement the following shall become immediately due:
- 15.3.1. Any and all outstanding invoices;
  - 15.3.2. Any costs accrued up to termination date not already subject to invoice;
  - 15.3.3. Any costs incurred by Jackdaw upon termination of the Contract.

## **16. Notices**

- 16.1. Any notice given to a party under or in connection with this contract shall be in writing and shall be:
- 16.1.1. Delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business (if a company) or (in the case of an individual) his last known address; or
  - 16.1.2. Sent by e-mail to a previously active e-mail address.
- 16.2. Any notice shall be deemed to have been received:
- 16.2.1. if delivered by hand, on signature of a delivery receipt;
  - 16.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second business day after posting;
  - 16.2.3. if sent by e-mail, at 9.00am on the next business day after transmission.
- 16.3. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **17. Limitation of Liability**

- 17.1. Jackdaw shall not be responsible in any circumstances to the Client or any third party for any indirect or consequential or inconsequential or economic damage or loss, howsoever caused, whether as a result of negligence, misrepresentation, breach of contract or otherwise.
- 17.2. Nothing in the forgoing shall be read as restricting or limiting in any way Jackdaw's liability for death or personal injury.

## **18. Indemnity**

- 18.1. The Client shall indemnify Jackdaw against any loss or damage which results from the Client's breach of this agreement or failure to abide by any of its terms.

## **19. Warranties**

- 19.1. Both parties and the signatories to this agreement warrant that they are authorised and permitted to enter into this agreement, and have obtained all necessary permissions and approvals.
- 19.2. Both parties warrant and undertake that they are not aware as at the date of this agreement of anything within their reasonable control which might or will adversely affect their ability to fulfil the obligations under this agreement.

## **20. Counterparts**

20.1. This agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## **21. Entire Agreement and Variation**

21.1. This agreement constitutes the entire agreement between the parties. It supersedes and extinguishes any previous agreements, promises, assurances, warranties, representations and understandings between them, whether orally or in writing, relating to the subject matter.

21.2. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

21.3. Any variation of this agreement must be agreed by both Jackdaw and the Client where such agreement shall not be unreasonably withheld.

## **22. Waiver**

22.1. No exercise, or failure to exercise, or delay in exercising any right or remedy by either Party shall constitute a waiver by that party of that or any other right or remedy.

## **23. Governing Law**

23.1. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

23.2. The parties irrevocably agree to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

## **24. Mediation**

24.1. If at any time any question, dispute or difference whatsoever shall arise as to the formation, meaning, operation, validity or effect of the Contract or the rights, duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of the Contract, either party may give to the other notice in writing of the existence of such question, dispute or difference and the same shall be referred to a mutually agreed Third Party Mediator within 14 days of such notice.

## **25. Arbitration**

25.1. If an attempt at Mediation as in Clause 24 should fail then the dispute or difference shall be referred to the arbitration of a single arbitrator to be agreed upon by the parties within 14 days of the failure of such an attempt, or in default of such agreement, to be nominated by the President for the time being of the Law Society of England and Wales such arbitration to be conducted in accordance with the Arbitration Act 1996

## **26. Severability**

26.1. If any term or provision in this agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.

## **27. Force Majeure**

27.1. Neither party shall be liable to the other for delays in performance attributable to acts, occurrences, events or illnesses beyond the reasonable control of such party.

## **28. Headings**

28.1. The headings in these Terms and Conditions are for convenience only and are not intended to have any legal effect.

### **29. Third Party Rights**

29.1. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.