

## BACKGROUND

The Client and Pen-gage Limited ("Pen-gage") wish to enter into an agreement for the provision of Services in accordance

### 1. DEFINITIONS

"Letter" means the Engagement Letter to which these terms and conditions are attached; "Business Days" means a day (other than a Saturday, Sunday or public holiday in UK & Wales) when banks in London are open for business; "Charges" has the meaning given to it in clause 4.1; "Client" shall mean the organisation or individual requesting the Services; "Conditions" means these terms and conditions as in place from time to time; "Contract" means the contract between Pen-gage and the Client for the provision of Services in accordance with the Conditions and the Letter; "Services" shall mean the services provided by Pen-gage as requested on the Letter; and "Commencement Date" has the meaning set out in clause 2.3.

### 2. BASIS OF CONTRACT

- 2.1. These Terms and Conditions apply to the provision of the services (**Services**) detailed in our engagement letter (**Letter**) by Pen-gage Ltd Ltd a company registered in England and Wales under number 11347363 whose registered office is at 36 Ell-dene Crescent, Gateshead, NE10 9UN(**we or us**) to the person buying the services (**you**). VAT Registration number 297422375.
- 2.2. You are deemed to have accepted these Terms and Conditions when you sign the engagement letter or from the date of any performance of the Services (whichever happens earlier) and these Terms and Conditions and our engagement letter form the contract (**the Contract**) and are the entire agreement between us.
- 2.3. You acknowledge that you have not relied on any statement, promise or representation made or given by or on our behalf. These Conditions apply to the Contract to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4. We do not provide Financial Advice.
- 2.5. Where the Services include the provision of guidance or information any guidance or information provided to you as part of the services is intended to inform and educate you or your employees of options that may be available to you or them. It is your or their decision whether to take or not take any action on the guidance we provide. We do not warrant or assert that we have provided all of the options that may be available to you or them nor that any option is suitable for you or them to take or not to take.
- 2.7. Any references to taxation are to UK taxation and are based on our understanding of the current UK tax law and HM Revenue and Customs practice which may change at any time.
- 2.8. Any reference to pension rules or regulations of a Scheme that you participate in (or may participate in) are based on our understanding of the rules or regulations of that Scheme and how it is administered. Our guidance and information cannot over-ride the regulations, rules or administrative processes of any pension scheme.

### 3. SERVICES AND INCORPORATED TERMS

- 3.1 Pen-gage shall provide the Services to the Client in accordance with the Contract.
- 3.2 Pen-gage shall use reasonable endeavours to meet the dates specified in the Letter for provision of the Services.
- 3.3 Pen-gage warrants to the Client that the Services will be provided using reasonable care and skill.
- 3.4 The client acknowledges that no advice or other regulated activity is provided as part of any service.

### 4. PRICE AND PAYMENT

- 4.1 The charges due from the Client to Pen-gage for the Services shall be as set out in the Letter or otherwise agreed in writing between the parties (the "Charges").
- 4.2 Pen-gage shall invoice the Client along with the booking confirmation of the Services.
- 4.3 The Client shall pay each invoice submitted by the Supplier within 30 business days of the invoice date, in full and cleared funds to a bank account nominated in writing by the Supplier.
- 4.4 If the Client fails to make any payment due to Pen-gage under the Contract, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays' Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest along with the overdue amount.

### 5. CANCELLATION

- 5.1 The Client may cancel any booking covered by this contract by giving notice in writing at least 10 working days before commencement of the provision of services. In cases where bookings are cancelled within 5 working days of the scheduled provision of services, the client will be liable for 100% of the relevant charges. If a client re-schedules within 10 working days of the scheduled provision of services, this will not be deemed as a cancellation.
- 5.2 In the case of a booking for training, where the client changes names of the attendees (but for the avoidance of doubt NOT the numbers) this will not be treated as a cancellation.
- 5.3 If Pen-gage is required to cancel the Services, it shall give as much notice to the Client as possible and the Client shall not be liable for any of the Charges.

### 6. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, training packs, slides, designs or other material except where otherwise assigned or licensed separately to this Agreement:

- a) furnished to or made available to the Client by or on behalf of the Pen-gage shall remain the property of Pen-gage; or
- b) prepared for the client for or on behalf of Pen-gage for use, or intended use, in relation to the performance by Pen-gage of its obligations under this agreement shall belong to the Pen-gage, and the Client shall not, and shall ensure that the client's staff shall not, without Pen-gage's prior approval, use or disclose any such Intellectual Property Rights

### 7. PUBLICITY

The Client shall not:

- i. make any press announcements relating to the Contract or the Services or publicise the Contract or the Services in any way; or
- ii. use Pen-gage's intellectual property rights, name or brand in any promotion, marketing materials, announcement or otherwise, without the prior written consent of Pen-gage.

### 8. YOUR OBLIGATIONS

- 8.1. You must obtain any permissions, consents, licences or otherwise that we need and must provide us with access to any and all relevant information, materials, properties and any other matters which we need to provide the Services.
- 8.2. If you do not comply with clause 14, we can terminate the Services.
- 8.3. We are not liable for any delay or failure to provide the Services if this is caused by your failure to comply with the provisions of this section (**Your obligations**).

### 9. LIMITATION OF LIABILITY

- 9.1 Our liability under these Terms and Conditions, and in breach of statutory duty, and in tort or misrepresentation or otherwise, shall be limited as set out in this clause.
- 9.2 The total amount of our liability is limited to the total amount of three times the Fees payable by you under the contract.
- 9.3 For the services set out in the Engagement Letter and subject to clause 38 below, the aggregate liability to you, in contract or tort or under statute or otherwise, for any loss or damage suffered by you (or by any such other party) arising from the delivery of or in connection with the delivery of the services, however the loss of damage is caused (but not if caused by our fraudulent or deliberate breach of duty) shall be limited to the amount specified in the Engagement Letter.
- 9.34 We are not liable (whether caused by our employees, agents or otherwise) in connection with our provision of the Services or the performance of any of our other obligations under these Terms and Conditions or the Engagement Letter for:
  - any indirect, special or consequential loss, damage, costs, or expenses or;
  - any loss of profits; loss of anticipated profits; loss of business; loss of data; loss of reputation or goodwill; business interruption; or, other third party claims; or
  - any failure to perform any of our obligations if such delay or failure is due to any cause beyond our reasonable control; or
  - any losses caused directly or indirectly by any failure or your breach in relation to your obligations; or
  - any losses arising directly or indirectly from the choice of Services and how they will meet your requirements or your use of the Services or any goods supplied in connection with the Services.
- 9.5 You must indemnify us against all damages, costs, claims and expenses suffered by us arising from any loss or damage to any equipment (including that belonging to third parties) caused by you or your agents or employees.
- 9.6 Nothing in these Terms and Conditions shall limit or exclude our liability for death or personal injury caused by our negligence, or for any fraudulent misrepresentation, or for any other matters for which it would be unlawful to exclude or limit liability.

## Terms and conditions cont'd

### 10. CIRCUMSTANCES BEYOND CONTROL

Neither of us is liable for any failure or delay in performing our obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question. If the delay continues for a period of 90 days, either of us may terminate or cancel the Services to be carried out under these Terms and Conditions.

### 11. ESCALATION

Where any matters arise under the Contract that the Client and Pen-gage cannot resolve between themselves, the parties agree that the matter may be escalated to an agreed independent party. The parties will act reasonably and cooperate in providing to the independent party relevant information in connection with the unresolved matter.

### 12. NOTICES

Any notice issued under the Contract must be made in writing to the recipient's registered office or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing and shall be deemed to have been received:

- i. if posted, 2 Business Days after the date on which it was posted; or
- ii. if delivered personally, when left at the relevant address; or
- iii. if given electronically, at the beginning of the next working day, so long as a confirmation of successful send receipt is received.

### 13. ENTIRE AGREEMENT

Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of the Contract.

### 14. DATA AND GDPR

By providing details on the Letter you are consenting to Pen-gage using that data as part of the contractual agreement. In addition, you consent to being added to a mailing list which will provide relevant updates and insight. You can opt out of this mailing at any time. Any personal data will not be shared with any third party.

### 15. THIRD PARTY RIGHTS

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

### 16. VARIATION

No variation of the Contract (or any of the documents referred to in it) shall be valid unless it is agreed in writing (this includes email; so long as that email is acknowledged) between the parties.

### 17. SEVERANCE

If one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions will be deemed severed from the remainder of these Terms and Conditions (which will remain valid and enforceable).

### 18. GOVERNING LAW

The Contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.