



## Think-Forward.com

### Standard Terms And Conditions

*Office Address*

*John Dalton House*

*121 Deansgate*

*Manchester*

*M3 2BX*

*Tel : (+44) (0)161 828 8291*

*Fax: (+44) (0) 161 831 7115*

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## **Caveat**

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## 1. Standard Terms and Conditions

IT IS HEREBY AGREED THAT

### ***Interpretation***

In this Agreement:

- 1 Intellectual Property Rights means any and all patents, patent applications, know-how, trade marks, trade mark applications, trade names, registered design, copyright, database rights or other similar intellectual property rights created, developed, subsisting or used in connection with the Specified Service and whether in existence at the date hereof or created in the future;
- 2 Specified Service means any goods, services and/or advice to be provided by the Supplier to the Client as detailed in Schedule [1] to this Agreement;
- 3 Specified Sum means the agreed consideration to be paid by the Client to the Supplier as detailed in Schedule 2 to this Agreement.
- 4 Supplier's personnel include employees, agents and substitutes of the Supplier.

### ***Agreement***

- 5 In consideration of the payment of the Specified Sum by the Client to the Supplier the Supplier shall provide the Specified Service.

### ***Specified Service***

- 6 The Supplier shall provide the Specified Service to the Client subject to the terms of this Agreement. .

### ***Fees***

- 7 The Specified Sum shall be as detailed in Schedule 2 to this Agreement, and it will be **exclusive of any VAT** which may be chargeable
- 8 The Supplier shall submit invoices in the agreed form to the Client as detailed in Schedule 2 to this Agreement.
- 9 The Client agrees to meet the Supplier's invoices in full within 30 days of receipt.

### ***Duration and Termination***

- 10 This Agreement shall commence from the date hereof unless agreed otherwise in Schedule 1 and shall remain in force until the Specified Service is completed as defined in Schedule 1 unless terminated early under the terms of this Agreement or by mutual consent.
- 11 Either party may terminate this Agreement by giving 30 days written notice to the other party in the event that:
  - 11.1 either party is in breach of this Agreement and fails to remedy such breach (if capable of remedy) after receiving written notice from the other party;
  - 11.2 the other party goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.
- 12 The Supplier may terminate this Agreement:
  - 12.1 by giving the Client written notice if the Client is in default of any agreed payments under this Agreement and has failed to remedy that default within of receiving a written demand from the Supplier; or
  - 12.2 by giving the Client written notice if the Client fails to accord the Supplier the reasonable access to premises, equipment, personnel or other information required for the Supplier to perform the Specified Service; or
  - 12.3 by giving the Client written notice if, in the Supplier's opinion, it is no longer appropriate for the Agreement to continue in force.
- 13 The Client may terminate this Agreement by giving the Supplier written notice, if the Supplier, or any party performing the Supplier's obligations, fails to provide a reasonable level or quality of service in the sole and reasonable opinion of the Client or if in the sole and reasonable opinion of the Client it is no longer appropriate for the Agreement to remain in force.
- 14 In the event that this Agreement is terminated before the completion of the Specified Service, the Supplier shall be entitled to payment by the Client for work completed on a quantum meruit basis

### ***Client's Obligations***

- 15 The Client shall, at its own expense, provide the Supplier with all documents or other materials and data or other information necessary for the completion of the Specified Service, in sufficient time to enable the Supplier to provide the Specified Service in accordance with any timetable or other target for progress or completion agreed in writing between the parties.

- 16 The Client shall be responsible for the content of all documents or other materials and shall ensure the accuracy of all data or other information provided to the Supplier in the course of this Agreement.
- 17 The Client shall, at its own expense, retain duplicate copies of all documents or other material and data or other information provided to the Supplier and shall insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, howsoever caused.
- 18 The Client shall ensure that the Supplier is accorded sufficient access to any of the Client's premises, information, data or personnel and use of any equipment that is reasonably necessary for the completion of the Specified Services. Where the Supplier requires access to any third party premises, information, data or personnel, the Client will make all reasonable efforts to arrange this for the Supplier.
- 19 The Client shall ensure that the Client and the Client's staff and premises comply with all relevant legislation or other regulations relating to health and safety matters and shall ensure that the Suppliers are provided with a safe working environment. In this context, the Client shall:
  - 19.1 ensure that valid and adequate Public Liability Insurance remains in force throughout the duration of this agreement; and
  - 19.2 ensure that the Suppliers are not prevented from complying with any relevant legislation or regulation.
- 20 The Client shall not take on any direct control over or responsibility for the Supplier's personnel. In particular, the Client acknowledges that the Supplier's personnel are professionals who will use their own initiative as to the manner in which the Specified Service is delivered and will not be subject to, or to the right of, supervision, direction or control as to the manner in which they renders the Specified Service.
- 21 The End-User acknowledges and accepts that the Supplier is in business on its own account and therefore may be engaged by other parties simultaneously to its performance of the Specification.

### ***Supplier's Obligations***

- 22 The Supplier will take all reasonable steps to ensure that the Specified Service is completed in accordance with any timetables or other targets agreed in Schedule 1.
- 23 The Supplier may obtain or provide extra resources (whether in the form of equipment or personnel) of the requisite standard in order to ensure that the

Specified Service is completed in accordance with Schedule 1, if, in the Supplier's sole discretion this is appropriate in order to comply with any agreed timetables or targets set out in Schedule 1.

- 24 The Supplier shall have the right to supply one or more substitutes of equivalent expertise to work in place of the original personnel. The Supplier acknowledges that the Client has the right to refuse to accept the substitute personnel if, in the view of the Client, the substitute personnel have insufficient qualifications or experience.
- 25 Where substitution occurs, the other terms and conditions of this contract, and in particular, (but not limited to) the Specified Sum and the timetable of the project, will remain unchanged, unless otherwise agreed by both parties in writing. For the avoidance of doubt, the Supplier shall be responsible for the payments and expenses of the Substitute personnel.
- 26 In the event that the Supplier cannot provide either the original personnel or acceptable substitute personnel, the Client is entitled to terminate this Agreement forthwith.
- 27 The Supplier shall ensure that it has valid and adequate Professional Indemnity Insurance, Public and Employer's Liability Insurance in force throughout the duration of this Agreement.

### ***Conflicts of Interest***

- 28 The Client understands and accepts that the Supplier is entitled to seek, apply for, accept and perform contracts to supply goods and services to third parties. However, during the currency of this Agreement, the Supplier undertakes not to accept contracts to supply goods or services to third parties where this could result in the Supplier providing goods or services to competitors of the Client and where this could have a commercially harmful effect on the Client.

### ***Warranties***

- 29 The Supplier warrants to the Client that the Specified Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with Schedule 1 to this Agreement and any timetables or other targets agreed.
- 30 Where, in connection with the provision of the Specified Service, the Supplier supplies any goods supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier.

- 31 The Supplier warrants that so far as it is aware all information regarding the Supplier's personnel's expertise, experience and qualifications provided to the Client is complete and accurate and up to date.
- 32 The Supplier warrants that it will, when utilising any of its own equipment or intellectual property in carrying out the engagement, ensure that any security requirements reasonably required by the Client are complied with.

### ***Limitation of Liability***

- 33 The Specified Service has been negotiated and agreed by the Supplier with the Client in the context of information provided by the Client as to the Client's particular needs and requirements. The Specified Services have been prepared and costed accordingly. Therefore:
  - 33.1 the Supplier shall have no liability to the Client for any delay, loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client;
  - 33.2 the Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from the Client making use of the Specified Service for any purpose not clearly disclosed to the Supplier or from the Client allowing a third party to make use of the Specified Service;
  - 33.3 except in respect of death or personal injury caused by the Supplier's negligence, or as expressly agreed in writing between the parties, the Supplier shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, other than under the express terms of this Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arises out of or in connection with the provision of the Specified Service or its use by the Client.
  - 33.4 except in respect of death or personal injury caused by the Supplier's negligence, or as expressly agreed in writing between the parties, the entire liability of the Supplier under or in connection with this Agreement or the Specified Service shall not exceed the amount of the Supplier's total anticipated charges for providing the Specified Service as detailed in Schedule 2 to this Agreement.

### ***Intellectual Property***

- 34 Unless agreed otherwise in writing between the Client and the Supplier:

- 34.1 The Client shall retain ownership of all Intellectual Property Rights of whatever nature and, if registrable, whether registered or not, in the documents or other material and data or other information provided to the Supplier in the context of this Agreement. For the avoidance of doubt, the Client shall not be deemed to have granted the Supplier any licence to use the documents or other material and data or other information other than for the purposes of this Agreement.
- 34.2 The Supplier shall retain ownership of all Intellectual Property Rights of whatever nature and, if registrable, whether registered or not, in all documents or other material and data or other information and devices or processes provided or created by the Supplier in the provision of the Specified Services save that the Supplier shall be deemed to have granted the Client a non-exclusive and non-assignable licence to make use of any such documents or other material and data or other information and devices or processes in the context of the Specified Services.
- 35 Where appropriate, the Supplier shall be deemed to have asserted its moral rights over any documents or other material provided or created by the Supplier in the provision of the Specified Services.
- 36 The Supplier warrants to the Client that:
- 36.1 no documents or other material and data or other information and devices or processes will be provided by the Supplier for use in the provision of the Specified Services which infringe any third party intellectual property rights;
- 36.2 any documents or other materials created by the Supplier in the provision of the Specified Services for use by the Client will be original and created specifically for the Client.
- 37 The Client warrants to the Supplier that no documents or other material and data or other information and devices or processes will be provided by the Client to the Supplier for use in the provision of the Specified Services which infringe any third party Intellectual Property Rights.
- 38 In the event that a claim for the infringement of third party Intellectual Property Rights is made or intimated against the Supplier in relation to documents or other material, data and other information or devices and processes provided to the Supplier by the Client for use in the provision of the Specified Services or which the Client dictated should be used by the Supplier in the provision of the Specified Services, the Client shall indemnify the Supplier against any and all costs, expenses, damages or other losses suffered or payments made by the Supplier in connection with the claim and any associated judgment or settlement.

### ***Confidentiality***

- 39 Both parties will take all reasonable steps to ensure that any documents or other materials and data or other information which are supplied to the other party in the provision of the Specified Services and are clearly marked as confidential remain confidential to the parties. Such information will only be made available by the parties to those personnel who have a reasonable need to know of it and the documents or other materials and data or other information or copies thereof will not be made available to any third parties. Either party is entitled to demand the return of all copies of any such documents or other materials and data or other information by giving the other party written notice.
- 40 This obligation of confidentiality will remain in force beyond the cessation or other termination of this Agreement.
- 41 On the cessation or earlier termination of this Agreement, each party shall return to other all documents or other material containing the Confidential Information.
- 42 This clause shall not apply to any documents or other materials and data or other information which are already in the public domain at the time when they are provided by either party, and shall cease to apply where either party is required by law to make a disclosure or if at any time the information becomes public knowledge through no fault of the other party.
- 43 Both parties undertake that any information which is received from the other party in the provision of the Specified Services will only be used for the purposes of this Agreement.
- 44 Supplier shall not advertise or announce that the Supplier is undertaking work for Client without Client's prior written consent. This provision shall remain in force notwithstanding termination of this Agreement.

### ***General***

- 45 The parties to this Agreement are independent businesses and nothing in this Agreement or by virtue of performing it shall be taken as creating a relationship of agent to principal, employer to employee, partnership or joint venture between (a) the Supplier and/or any of its personnel and (b) the Client. Neither party shall be entitled to enter into agreements or other arrangements on behalf of the other.
- 46 The Supplier shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Supplier's reasonable control.
- 47 The terms of this Agreement represent the entire agreement between the parties and supercede any previous representations or agreements whether recorded in writing or otherwise.

- 48 Save for changes to the Specified Service, (which must be agreed in accordance with Clause 3), the terms of this Agreement including the Schedules may only be varied when the variation is recorded in writing and agreed by both parties.
- 49 Both parties agree that the terms of this Agreement are fair and reasonable in all the circumstances.
- 50 It is agreed that this Agreement will be governed and construed according to the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts.