



## **BUSINESS TO BUSINESS – SUPPLY OF SERVICES**

**Ref T&C2020 Dated 12.05.2020**

THIS AGREEMENT shall commence on a date as defined on the received purchase order

AND IS MADE BETWEEN:

Responsive Ltd whose registered office is at Unit 3a, Hallwood road, Workington, Cumbria, CA14 4JR or a Responsive Ltd owned subsidiary where Responsive Ltd forms the parent company ("the Company"); and

"the Customer" as defined within the purchase order received

In submitting a purchase order to Responsive you agree to accept the following Terms of service;

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7.**

### **1. Interpretation**

#### **1.1 Definitions:**

|                                      |  |
|--------------------------------------|--|
| <b>Business Day:</b>                 | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.   |
| <b>Charges:</b>                      | the charges payable by the Customer for the supply of the Services in accordance with clause 5.  |
| <b>Commencement Date:</b>            | has the meaning set out in clause 2.2.   |
| <b>Conditions:</b>                   | these terms and conditions as amended from time to time in accordance with clause 10.6.  |
| <b>Contract:</b>                     | the contract between Responsive and the Customer for the supply of Services in accordance with these Conditions.   |
| <b>Customer:</b>                     | the person or firm who purchases Services from Responsive.   |
| <b>Customer Default:</b>             | has the meaning set out in clause 4.2.   |
| <b>Deliverables:</b>                 | Deliverables set out in the purchase Order produced by Customer or as defined within the written quotation from RESPONSIVE.                                |
| <b>Intellectual Property Rights:</b> | patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue |



for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights in any jurisdiction.

**Purchase Order:**

in the Customer's purchase order form, the Customer's written acceptance of a quotation by RESPONSIVE.

**Services:**

the services, including the Deliverables, supplied by RESPONSIVE to the Customer as set out in the Specification.

**Specification:**

the description or specification of the Services provided in writing by RESPONSIVE to the Customer.

**Data Protection Legislation:**

the UK Data Protection Legislation and any other European Union legislation (GDPR) relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**1.2 Interpretation:**

- (a) 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 any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (c) A reference to **writing** or **written** includes email.

**2. Basis of contract**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when RESPONSIVE issues acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by RESPONSIVE, and any descriptions or illustrations contained in RESPONSIVE's catalogues or brochures, are issued or



published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given shall not constitute an offer, and is only valid for a period of 14 Business Days from its date of issue or as detailed within the written quotation supplied by RESPONSIVE

### **3. Supply of Services**

- 3.1 RESPONSIVE shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 RESPONSIVE shall use all reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. RESPONSIVE will take all reasonable care to ensure we can comply with the requirements but where it is evident that this will not be possible we will liaise with our customer.
- 3.3 RESPONSIVE shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and shall notify the Customer in any such event.
- 3.4 RESPONSIVE warrants to the Customer that the Services will be provided using reasonable care and skill and with suitably qualified and experienced personnel suitably selected for the task by RESPONSIVE management.

### **4. Customer's obligations**

- 4.1 The Customer shall:
- (a) Ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - (b) Co-operate with RESPONSIVE in all matters relating to the Services;
  - (c) Provide RESPONSIVE with such information and materials as RESPONSIVE may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects and supplied within a timely manner so that RESPONSIVE can meet the deliverable requirements.
  - (d) Obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - (e) Comply with any additional obligations as set out in the Specification;



- 4.2 If RESPONSIVE's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation
- (a) RESPONSIVE shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays RESPONSIVE's performance of any of its obligations;
  - (b) RESPONSIVE shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from RESPONSIVE's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - (c) the Customer shall reimburse RESPONSIVE on written demand for any costs or losses sustained or incurred by RESPONSIVE arising directly or indirectly from the Customer Default.

## **5. Charges and payment**

- 5.1 Condition 5.2 shall apply if the Services are to be provided on a time-and-materials basis. Condition 5.3 and condition 5.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 5 shall apply in either case.
- 5.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with RESPONSIVE's standard fee rates as amended from time to time;
  - (b) RESPONSIVE's standard fee rates (as published from time to time) are calculated on the basis of an eight-hour day worked between 8am and 4pm on weekdays (excluding weekends and public holidays);
  - (c) RESPONSIVE shall be entitled to charge its standard fee rate (as published from time to time) plus 50% for each hour worked outside the hours referred to in condition 5.2 (b) on a pro-rata basis; this may be additional to fixed price service cost.
  - (d) RESPONSIVE shall invoice the Customer once the service detailed within the customers purchase order or as agreed in an accepted quotation.
- 5.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to RESPONSIVE in instalments as set out in the Specification. All amounts due under this agreement shall be paid by the Customer to RESPONSIVE in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). RESPONSIVE shall invoice the Customer for the charges at each relevant stage, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 5.4.
- 5.4 Any fixed price contained in the Specification excludes:



- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by RESPONSIVE for the supply of the Services. Such expenses, materials and third party services shall be invoiced by RESPONSIVE at cost; and
  - (b) VAT, which RESPONSIVE shall add to its invoices at the appropriate rate; and
  - (c) additional handling fees of 12.5%
- 5.5 Any queries with the invoice or complaints with the service delivered shall be received by RESPONSIVE within 15 days of invoice submittal to the customer. Beyond this timescale the required payment date as stated on the invoice.
- 5.6 The Customer shall pay each invoice submitted to it by RESPONSIVE in full, and in cleared funds as follows;
  - a) On successful credit account with RESPONSIVE – due within 30 days of receipt or as otherwise stated on the invoice
  - b) Proforma as stated on the invoice and due before service completion
- 5.7 Without prejudice to any other right or remedy that RESPONSIVE may have, if the Customer fails to pay on the due date RESPONSIVE may:
  - (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
  - (b) suspend all Services until payment has been made in full.
- 5.8 Time for payment shall be of the essence of the Contract.
- 5.9 RESPONSIVE may, without prejudice to any other rights it may have, set off any liability of the Customer to RESPONSIVE against any liability of RESPONSIVE to the Customer.
- 6. Intellectual property rights**

All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by RESPONSIVE.
- 6.1 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.
- 6.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in this clause 6.



- 6.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **7. Limitation of liability**

- 7.1 Nothing in the Contract shall limit or exclude RESPONSIVE's liability for:
- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) Fraud or fraudulent misrepresentation; or
  - (c) Any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, RESPONSIVE shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract 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.
- 7.3 Subject to clause 7.1, RESPONSIVE's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 7.4 This clause 7 shall survive termination of the Contract.

## **8. Termination**

- 8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.
- 8.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) The other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - (b) The other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order



of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) The other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) The other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3 Without limiting its other rights or remedies, RESPONSIVE may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified to make such payment.

## **9. Consequences of termination**

On termination of the Contract for any reason:

- (a) The Customer shall immediately pay to RESPONSIVE all of its outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, RESPONSIVE shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) The Customer shall return all of any Deliverables which have not been fully paid for.
- (c) The accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) Clauses which expressly or by implication survive termination shall continue in full force and effect.

## **10. General**

### **10.1 Force majeure**

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

### **10.2 Assignment and other dealings**

- (a) RESPONSIVE may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.



- (b) The Customer shall not, without the prior written consent of [Responsive], assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

### 10.3 **Confidentiality**

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.3(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 the Contract. 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 10.3; 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 the Contract.

### 10.4 **Entire agreement**

10.5 This agreement 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.

### 10.6 **Variation**

RESPONSIVE may revise these terms and conditions at any time and shall notify the Customer in any such event.

### 10.7 **Waiver**

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

### 10.8 **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

### 10.9 **Notices**





- (a) Any notice given to a party under or in connection with this contract 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.
- (b) 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. For the purposes of this clause, "writing" shall not include email.

#### 10.10 **Third parties**

No one other than a party to the Contract shall have any right to enforce any of its terms.

#### 10.11 **Governing law**

The Contract, 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.

#### 10.12 **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 the Contract or its subject matter or formation.

### **11 Restrictions**

In order to protect the legitimate business interests of the Company, the client covenants with the Company [for itself and as agent for each group Company] that it shall not (and shall procure that no member of the client's Group shall) (except with the prior written consent of the Company):

- (a) Attempt to solicit or entice away; or
- (b) Solicit or entice away from the employment or service of the Company, the services of any Restricted Person other than national advertising campaign open to all-corners and not specifically targeted at such staff of the Company.

The client shall be bound by the covenant set out in Clause 11 during the term of this agreement, and for a period of 12 months after termination of this agreement

For the purposes of this Clause 11, a Restricted Person shall mean any firm, company or person employed or engaged by the Company or any Group Company during the term of this agreement, who has been engaged in the provision of the Services or the management of this agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement [and who could materially damage the interests of the Company if they were involved in any capacity in any business concern which competes with the business of the Company.

If the client commits any breach of this Clause 11, the client shall, on demand, pay to the Company or relevant Group Company a sum equal to one year's basic salary or the annual fee that was payable by the Company or relevant Group Company to the Restricted Person plus



the recruitment costs incurred by the Company or relevant Group Company in replacing such person.