

TERMS AND CONDITIONS

This document contains the terms and conditions on which basis we will supply any services to you under a fee proposal or otherwise (**Services**).

By instructing Publica, you agree to be bound by these terms and conditions, which shall constitute an agreement between you and us. In the event of any conflict between these terms and conditions and any fee proposal and/or appointment agreement, the order of precedence shall be (1) the appointment agreement, (2) these terms and conditions, (3) the fee proposal.

1. INFORMATION ABOUT US

- 1.1 We are Publica Associates Limited, a company registered in England and Wales under company number 07225685 and with our registered office at Hamilton House, 1 Temple Avenue, Temple, London, EC4Y 0HA.
- 1.2 Our role is to provide client advisory services in relation to public realm, urban design, urban planning and other related projects.
- 1.3 We are not architects and do not provide architectural services.

2. ENGAGEMENT

- 2.1 By instructing us to provide you with our Services for any project, you agree to engage us on an exclusive basis in respect of the Services or any similar services for the agreed term of the project set out in any relevant fee proposal.
- 2.2 We may, however, at our sole discretion where we are (a) not retained to complete a particular project; or (b) not retained after the pitching stage for a project agree to licence all or part of our work to you or a third party for further use, for a fee to be agreed based on prevailing market rates.

3. FEES AND PAYMENT

- 3.1 Upon receiving an enquiry from you in respect of the provision of any Services, we shall send you details of our fees (fee proposal) for the Services to be provided to you. This fee proposal may take the form of a document, email or any other form of communication with the client.
- 3.2 If you instruct us to commence the Services, this will constitute acceptance of the fee proposal by you as legally binding upon you. A payment of 25% is due on instruction of services.
- 3.3 All invoices must be paid by you within 30 days of presentation.
- 3.4 We reserve the right to charge additional fees for meetings or other work on a day rate where the number of meetings or other work exceeds what was expressly agreed and/or referred to in the fee proposal. Project expenses and disbursements, including printing costs, incurred by Publica are to be recharged to you. We will notify you of such costs in advance.
- 3.5 Additional usage of content produced, beyond the agreed intended purpose, will be subject to agreement by both parties in advance of a licensing fee. Additional usage includes but is not limited to production of internal and external documents, marketing materials and commercial publication.
- 3.6 Commercial publication of Publica work above an agreed number of copies will be subject to agreement by both parties in advance of royalty percentages and other terms.

4. DEADLINES

- 4.1 Indicative timeframes, tasks and deadlines will be presented in the fee proposal. Any amendments must be agreed with Publica prior to instruction.
- 4.2 Both parties will be obliged to meet the deadlines contained in the fee proposal (including in respect of submission by you of comments) unless we mutually agree otherwise to extend any deadline in writing.
- 4.3 Each party will endeavour to meet their deadlines by applying their reasonable time, skill, care and attention for any particular work and keeping in regular contact with the other party. Any matter that may arise which would make it difficult for a party to meet a deadline should be notified to the other party as soon as reasonably practicable.
- 4.4 Any extension of the programme beyond the timeframes and tasks agreed will incur an additional fee, either a fixed sum or time charge as agreed by you.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights and all other rights in the Services and materials provided as part of the Services shall be owned by us at all times and such rights shall be licensed to you as are necessary to enable you to make reasonable use of the Services for the intended purpose as agreed. Any discretionary license granted to you under this clause shall be on a non-exclusive, non-transferable worldwide basis. The term "**Intellectual Property Rights**" shall include all patents, rights to inventions, utility models, copyright and related rights, foreign rights, trade marks, service 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 rights, 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.
- 5.2 You acknowledge that, where we do not own a part of the materials provided as part of the Services (including but not limited to maps, photography, illustrations), your right to continue to use such materials may be conditional upon us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to continue to license such rights to you. To the extent that we are not able to procure such continued licence, you acknowledge that you shall have no cause of action against us.
- 5.3 You and any third party may only distribute our work or content with prior written consent from us. This includes without limitation draft documents, which may not be circulated without our prior written consent.
- 5.4 You shall be responsible to us (and indemnify us in full for all associated costs) for any breach of our Intellectual Property Rights including any breach by any of your employees or contractors (e.g. architects) involved in any project.
- 5.5 Any grants of rights or licensing are conditional on prior payment in full of agreed fees.

6. ISSUE OF WORK AND ATTRIBUTION

- 6.1 Outputs will be issued in the form of hard copy reports, or a high-resolution non-editable pdf where agreed in advance with the client. Original artwork or separate elements of the collated documents will not be issued unless agreed in advance with Publica.
- 6.2 Work must not be altered or edited by you or any third party without our prior written consent, or used in any format other than the agreed intended purpose.
- 6.3 You acknowledge our right to be identified and credited for our work and content provided in our Services to you (including in any publication or marketing material), and for that work to be appropriately captioned as agreed with Publica, irrespective of whether we continue to be involved in any project.
- 6.4 Separately, we shall have the right to refer to our participation in a project in any of our showreels or other marketing or promotional material. At our discretion, we may decide not to exercise these rights.

7. RESTRICTIVE COVENANTS

- 7.1 In order to protect the confidential information of our business to which you may have access to as a result of the provision of providing the Services, you covenant that you shall not during the term of any project or for a period of 24 months after termination of a project, directly or indirectly and whether alone or through any other person, firm or company:
- (a) solicit or entice away (or attempt to solicit or entice away) any person employed or engaged by us at any time during the term of any project;
 - (b) solicit or endeavour to entice away from us a client with a view to providing services to that client in competition with our business; or
 - (c) cause any third party to reduce the amount of business transacted between the third party and us or to seek to change the terms of such business in a manner adverse to our business.
- 7.2 Any information or methodology detailed by Publica in its scope of services, fee proposal or any other communication is for client consideration only and may not be provided to third parties without prior agreement. Further use of this information or methodology internally or by third parties will require prior agreement of appropriate licensing and fee.
- 7.3 Each of the restrictions in this clause 7 is intended to be separate and severable. If any of the restrictions shall be held to be void but would be valid if part of their wording were deleted, such restriction shall apply with such deletion as may be necessary to make it valid or effective.

8. WARRANTIES

We cannot give any warranties or representations in relation to the designs for any project, that any designs will be of satisfactory quality or that planning permission for any project will be obtained and any such warranties are disclaimed by us absolutely.

9. CONFIDENTIALITY

- 9.1 We acknowledge that our work may give us access to confidential information. We respect the confidentiality of all our clients, their clients, and of members of the public and shall use our reasonable endeavours to protect and maintain any confidential information subject to clause 9.3.
- 9.2 You undertake that you shall not at any time during the term of this agreement and for a period of 5 years after disclose to any person any confidential information disclosed to you by us concerning our business or affairs, including information relating to our operations, clients, customers, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers (**Confidential Information**), except as permitted by clause 9.3.
- 9.3 Either party may disclose the Confidential Information:
- (a) to their employees, officers, agents, consultants or subcontractors (**Representatives**) who need to know such information for the purposes of carrying out their obligations under this agreement, provided that they take all reasonable steps to ensure that the Representatives comply with the confidentiality obligations contained in this clause 9 as though they were a party to this agreement. Each party shall be responsible for their Representatives' compliance with the confidentiality obligations set out in this clause; or
 - (b) as may be required by law, court order or any governmental or regulatory authority; or
 - (c) to the extent that such information is already in the public domain other than by reason of a breach of legal or regulatory obligation by either party or by a third party.
- 9.4 We reserve all rights in the Confidential Information. No rights or obligations in respect of the Confidential Information other than those expressly stated in these terms and conditions are granted to you or to be implied from these terms and condition.

10. CANCELLATION

- 10.1 If you cancel the agreement between us, you must inform us in writing. Upon cancelling the agreement, you shall be responsible for all the fees and costs referred to in clause 3.
- 10.2 You must also return any items we have provided to you to us immediately, in the same condition in which you received them, and at your own cost and risk. If you fail to comply with this obligation, we may have a right of action against you for compensation.

11. TERMINATION

- 11.1 On the occurrence of an Event of Default as defined hereunder, the non-defaulting party may serve a notice of default on the defaulter requesting it to cure the breach within 15 (fifteen) days from the date of the notice, failing which the non-defaulting party shall be entitled forthwith to terminate this agreement.
- 11.2 If the Event of Default is cured, the notification letter becomes null and void. If the Event that the Default is not curable, then the non-defaulting party shall be entitled to terminate this Agreement upon serving 7 days' notice.
- 11.3 An Event of Default shall occur on the occurrence of any of the following events relating to either of the parties:
- (a) a material breach of these terms and conditions;
 - (b) a breach in payment obligation under these terms and conditions amongst the parties;
 - (c) the existence of fundamental creative or ethical differences between the parties;
 - (d) any representation or warranty proving to be incorrect and such representation or warranty having an adverse effect on the party's ability to perform its obligation therein;
 - (e) either party ceasing to function as a going concern or to conduct its operations in the normal course of business;
 - (f) either party being declared bankrupt, insolvent or subject to an order of the court for attachment of its assets, including and not limited to suspension of operation of business/bank accounts;
 - (g) either party being subject to winding up proceedings whether voluntary or involuntary or an order of the court being made for the appointment of a liquidator or receiver to manage the assets/affairs of such party; or
 - (h) either party being acquired by any third party or the government or undergoing a merger.
- 11.4 Strictly subject to the provisions of clause 13, upon termination of this agreement for any reason whatsoever the parties shall:
- (a) settle all agreed fees and payments between the parties hereto within 30 days of the termination.
 - (b) return to the other party all documents and any other materials related to the Services as may have been supplied by the other party which remain in their possession or control within 14 days, except for those documents which they are required to retain according to the law of their country of operation or incorporation.
- 11.5 Notwithstanding the provisions of the remainder of this clause 11, we may set off any of our liabilities against any sums owing under outstanding invoices or otherwise.

12. TRANSFER OF RIGHTS AND OBLIGATIONS

- 12.1 This agreement is binding on us and on our respective successors and assignees.
- 12.2 You may not transfer, assign, charge or otherwise dispose of this agreement, or any of your rights or obligations arising under it, without our prior written consent.
- 12.3 We may transfer, assign, charge, sub-contract or otherwise dispose of this agreement, or any of our rights or obligations arising under it, at any time during the term of this agreement.

13. EVENTS OUTSIDE OUR CONTROL

- 13.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations that is caused by events outside our reasonable control (**Force Majeure Event**).
- 13.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
- (a) strikes, lock-outs or other industrial action;
 - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
 - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (e) impossibility of the use of public or private telecommunications networks; and
 - (f) the acts, decrees, legislation, regulations or restrictions of any government.
- 13.3 Our performance under any contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

14. WAIVER

- 14.1 If we fail, at any time, to insist upon strict performance of any of your obligations under these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled, this will not constitute a waiver of such rights or remedies and will not relieve you from compliance with such obligations.
- 14.2 A waiver by us of any default will not constitute a waiver of any subsequent default.
- 14.3 No waiver by us of any of these terms and conditions will be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

15. SEVERABILITY

If any of these terms and conditions are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

16. ENTIRE AGREEMENT

- 16.1 These terms and conditions and any document expressly referred to in them constitute the whole agreement between us and supersede all previous discussions, correspondence, negotiations, previous arrangement, understanding or agreement between us relating to a particular project.
- 16.2 We each acknowledge that, in entering into this agreement, neither of us relies on, or will have any remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or the documents referred to in them.
- 16.3 Each of us agrees that our only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) will be for breach of contract.
- 16.4 Nothing in this clause limits or excludes any liability for fraud.

17. OUR RIGHT TO VARY THESE TERMS AND CONDITIONS

- 17.1 We have the right to revise and amend these terms and conditions from time to time to reflect changes in market conditions affecting our business, changes in technology, changes in payment methods, changes in relevant laws and regulatory requirements and changes in our system's capabilities.
- 17.2 You will be subject to the policies and terms and conditions in force at the time that you instruct us for our Services, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to instructions previously made by you), or if we notify you of the change to those policies or these terms and conditions before we send you the Schedule (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within seven working days of receipt by you of the Schedule).

18. LAW AND JURISDICTION

Any dispute or claim will be governed by English law and will be subject to the exclusive jurisdiction of the courts of England and Wales.

Publica Associates Limited, Feb 2019