

PERFORMANCE PLUS PARTNERSHIP TERMS & CONDITIONS OF SERVICE

BY ENGAGING OUR SERVICES, YOU HEREBY AGREE TO THESE TERMS & CONDITIONS

PARTIES

- 1) **PERFORMANCE PLUS (EAST ANGLIA) LIMITED (trading as PERFORMANCE PLUS PARTNERSHIP)** is a company incorporated and registered in England and Wales with company number 4991070 whose registered office is at 3, The Avenue, Hemsby, Great Yarmouth, Norfolk, NR29 4ET, England (“**P+P**”); and
- 2) You are the **CUSTOMER** who has engaged P+P to perform Services on behalf of the business that you work for (the “**Customer**”).

1. DEFINITIONS & INTERPRETATION

- 1.1. The definitions and rules of interpretation in this clause apply in these Terms & Conditions of Service (“**Agreement**”).
- 1.2. Definitions:
 - Brief:** an document detailing the Services and/or Deliverables (including the Charges) to be provided by P+P under this Agreement.
 - Charges:** the Charges for the Services and the Deliverables provided by P+P under this Agreement (including any Third Party Materials), as detailed in the Brief;
 - Data Protection Laws:** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the General Data Protection Regulation 2016/679 (GDPR) from 25 May 2018 and laws implementing or supplementing the GDPR, and to the extent applicable, the data protection or privacy laws of any other country;
 - Deliverables:** all information, content and materials developed or provided by P+P in relation to the Services in any media, including: data, diagrams, reports and specifications (including drafts);
 - Intellectual Property Rights:** any patents, trade marks, service marks, copyright, database rights, moral rights, design rights, unregistered design rights, domain names, rights in get-up, topography rights, know-how, confidential information and any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in England or any other part of the world together with any goodwill relating or attached to such rights;
 - Services:** the provision of planning, marketing, sales, formal management frameworks, International Standards certification, human resources services provided by P+P and/or any other services from time to time, as detailed in the Brief to this Agreement, and any products or software provided by P+P in connection with the Services;
 - Third Party Materials:** any third party software, hardware or materials provided by P+P in conjunction with the Services; and
 - Third Party Suppliers:** any third parties commissioned for the provision of any part of the Services or any Third Party Materials.
- 1.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5. The terms ‘including’, ‘include’, ‘in particular’ or any similar expression shall be illustrative only and are not intended to limit the sense of the words preceding those terms.
- 1.6. The headings of the clauses of this Agreement are for convenience of reference only and are not intended to be part of, or affect, the meaning or interpretation of this Agreement.
- 1.7. A reference to ‘writing’ or ‘written’ includes faxes and email unless stated otherwise.

2. ENGAGEMENT

- 2.1. This Agreement shall:
 - 2.1.1. apply to and be incorporated into any Services to be provided by P+P to the Customer; and
 - 2.1.2. prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer’s purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2. In consideration of payment to P+P of the Charges, the Customer engages P+P, and P+P agrees, to provide the Services and produce the Deliverables in accordance with the Brief.
- 2.3. In consideration of payment to P+P of the Charges, the Customer engages P+P under this Agreement, and P+P agrees, to provide the Services and produce the Deliverables in accordance with the applicable Brief.

3. P+P’S OBLIGATIONS

- 3.1. P+P shall:
 - 3.1.1. provide the Services and Deliverables with reasonable care and skill;
 - 3.1.2. use reasonable endeavours to provide any Third Party Materials that are requested in in the Brief to the Customer;
 - 3.1.3. use reasonable endeavours to comply with any timeline set out in the Brief. Any time frames or dates agreed with P+P are based on estimates only and time will not be of the essence for the performance of the Services or the supply of the Third Party Materials; and
 - 3.1.4. engage any Third Party Suppliers for the provision of any part of the Services in P+P’s sole discretion.
- 3.2. Whilst P+P will take reasonable care not to damage data files, P+P does not guarantee the integrity of the data held on any of the Customer’s computers, storage devices or other items in its possession from time to time.
- 3.3. P+P will use reasonable endeavours to ensure that viruses and/or malware do not transfer from its systems to the Customer’s systems.

4. CUSTOMER’S OBLIGATIONS

- 4.1. The Customer will:
 - 4.1.1. be responsible for providing the appropriate resources required to achieve the Brief;
 - 4.1.2. promptly provide all such information, materials, co-operation and assistance reasonably required by P+P pursuant to the Services;
 - 4.1.3. make the required staff available by prior arrangement during visits by P+P to the Customer's premises / place of work;
 - 4.1.4. ensure that it has the appropriate consent and authorisation for the Services to be provided;
 - 4.1.5. provide access to its premises during the Customer's normal business hours for any site visits requested by P+P; and
 - 4.1.6. provide access to its computer systems and local network as requested by P+P.
- 4.2. If P+P's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, P+P will not be liable for any delay in the provision of the Services.
- 4.3. Whilst P+P may provide advice and make recommendations for the Customer to follow, P+P will not be liable for the Customer's compliance with laws or regulations or the Customer's failure to follow P+P's advice and recommendations.

5. CHARGES AND PAYMENT

- 5.1. The Customer will pay all Charges (as detailed in the Brief) and any additional fees agreed under this Agreement to P+P immediately on receipt of P+P's invoice by bank transfer or by cheque (which must be received in clear funds within 14 days).
- 5.2. All amounts due under this Agreement will be paid by the Customer to P+P in full without any set-off, counterclaim, deduction or withholding.
- 5.3. Unless otherwise stated, the Charges exclude:
 - 5.3.1. VAT (or any similar sales tax in force from time to time) (where applicable); and
 - 5.3.2. the cost of any ancillary expenses reasonably incurred by P+P in connection with the provision of the Services, including travel and accommodation (where applicable).
- 5.4. P+P reserves the right to make additional charges for extraordinary expense including, but not limited to, fees for courier services requested by the client or hotel expenses incurred as a result of excessive travelling time to the Customer's place of work. Whenever such expenses can be anticipated they will be agreed in writing, in advance, between the parties.
- 5.5. Without prejudice to any other right or remedy that P+P may have, if the Customer fails to pay P+P by the relevant invoice due date, P+P may:
 - 5.5.1. charge interest on such sum from the due date for payment in accordance with the Late Payments of Commercial Debts (Interest) Act 1998, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and/or
 - 5.5.2. suspend the provision of the Services.
- 5.6. All payments payable to P+P under this Agreement will become due immediately on the termination of this Agreement, notwithstanding any other provision. This clause is without prejudice to any right to claim for interest or any other right under this Agreement.
- 5.7. P+P may, without prejudice to any other rights it may have, set off any liability of the Customer to P+P against any liability of P+P to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. The Customer hereby grants to P+P a non-exclusive, perpetual, irrevocable, royalty-free, worldwide licence to use the content and materials supplied by the Customer for the purposes of the provision of the Services and creation of the Deliverables only.
- 6.2. All Intellectual Property Rights and all other rights in the Deliverables shall vest and remain vested in P+P.
- 6.3. P+P licenses all Intellectual Property Rights in the Deliverables (to the extent that they do not include any Third Party Materials) to the Customer on a non-exclusive, perpetual, irrevocable, non-transferable, royalty-free, worldwide basis to enable the Customer to use the Deliverables for internal business purposes.
- 6.4. The copyright and other Intellectual Property Rights in Third Party Materials supplied by P+P is owned by Third Party Suppliers. The Customer acknowledges that the Customer's use of rights in Third Party Materials may be governed by, and may be conditional upon, the Customer agreeing to an end-user licence (or sub-licence) of such rights directly with the relevant licensor.

7. INDEMNITY

- 7.1. The Customer will indemnify and keep P+P indemnified against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by P+P arising out of or in connection with any claim in relation to:
 - 7.1.1. any content, information or materials provided by the Customer to P+P directly or indirectly pursuant to the Services which is of a defamatory, offensive or illegal nature or that infringe data protection or privacy rights; and
 - 7.1.2. actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with any content, information or materials provided by the Customer to P+P pursuant to the Services.

8. CONFIDENTIALITY

- 8.1. A party ("**Receiving Party**") will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("**Confidential Information**").
- 8.2. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
 - 8.2.1. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under this Agreement;
 - 8.2.2. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its employees, agents and sub-

- contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under this Agreement and provided that such employees, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
- 8.2.3. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
- 8.3. Nothing in this Agreement will prevent the Receiving Party from using or disclosing any Confidential Information which:
- 8.3.1. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
- 8.3.2. the Receiving Party can show was (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
- 8.3.3. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
- 8.3.4. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
- 8.3.5. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
- 8.4. This clause 8 shall survive termination of this Agreement, however arising.

9. DATA PROTECTION

- 9.1. General Obligations. Each party will ensure that in the performance of its obligations under this Agreement it will at all times comply with all applicable Data Protection Laws and any other applicable privacy laws and regulations.
- 9.2. Data Specification: The Customer must provide P+P with details of the (a) subject matter and duration of any processing to be undertaken by P+P; (b) the nature and purpose of the processing; and (c) the type of Personal Data and the categories of data subject relevant to this Agreement.
- 9.3. Data Controller. The Customer acknowledges and agrees that it will be the Data Controller under this Agreement. The Customer warrants that the Personal Data is processed for legitimate and objective purposes and that the Customer is not processing more Personal Data than required for fulfilling such purposes. The Customer is responsible for ensuring that a valid legal basis for processing exists at the time of transferring the Personal Data to the Customer, including that any consent of the relevant data subjects is given explicitly, voluntarily, unambiguously and on an informed basis. Upon the Customer's request, the Customer undertakes, in writing, to account for and/or provide documentation of the basis for processing. In addition, the Customer warrants that the data subjects to which the Personal Data pertains have been provided with sufficient information on the processing of their Personal Data. The Customer undertakes not to provide P+P with access to any Sensitive Personal Data (defined by Data Protection Laws). The Customer acknowledges and agrees that it be responsible for adequately addressing the use of cookies and data protection obligations in its Client terms & conditions and policies. As P+P does not have any control over the Customer's data protection notices, policies and terms & conditions, the Customer will indemnify and keep P+P indemnified against all losses, costs, and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by P+P arising out of or in connection with any claim in respect of:
- 9.3.1. a breach of this clause 9.3;
- 9.3.2. any liability arising whatsoever in respect of the cookies on, or the capture of Personal Data through, the Customer's website(s); and
- 9.3.3. the consent of data subjects for the exportation of any Personal Data outside of the European Economic Area by P+P under clause 9.6.
- 9.4. Data Processor. P+P acknowledges and agrees that it will be the Data Processor under this Agreement and that it shall: (a) keep all Personal Data it receives, stores and collects from the Customer strictly confidential (pursuant to clause 8 (Confidentiality)), and not disclose any Personal Data to third parties; (b) not use the Personal Data for any purpose other than to perform its obligations under this Agreement; (c) ensure that all Personal Data it receives, stores and collects from the Customer is processed in accordance with this Agreement or as otherwise instructed in writing from time to time by the Customer and P+P shall not process the Personal Data for any other purpose, unless required by law to which P+P is subject, in which case P+P shall to the extent permitted by law inform the Customer of that legal requirement prior to responding to the request; (d) promptly carry out any written request requiring P+P to amend, transfer or delete the Personal Data or any part of the Personal Data made by the Customer during this Agreement; and (e) notify the Customer without undue delay or in any case within 48 hours upon P+P or any sub-processor becoming aware of a breach affecting Personal data and at this time providing the Customer with all sufficient information required to meet any obligation to notify the relevant data protection authority or inform affected individuals under applicable Data Protection Laws.
- 9.5. Assistance. P+P agrees to assist the Customer with all subject access requests which may be received from an end-customer in a prompt timeframe (at the Customer's cost) and ensure that appropriate technical and organisational measures are in place to enable the Customer to meet its obligations to those requesting access to Personal Data held by P+P. Upon request, P+P shall provide you with reasonably requested information within a reasonable timeframe to demonstrate its compliance with this clause 9. P+P shall assist the Customer in relation to any data impact assessments and/or any prior consultation with the relevant data protection authority, provided that P+P shall be entitled to charge a reasonable fee for such assistance.
- 9.6. Data Transfers. P+P agrees not to transmit any data or information to a country or territory outside the European Economic Area without the Customer's prior written consent, unless it is subject to an adequate level of protection in accordance with Data Protection Laws.
- 9.7. Return of Data: Upon the termination or expiry of this Agreement for any reason, P+P shall return all Personal Data to the Customer as requested by the Customer in writing, provided that this shall not prevent P+P from retaining a copy to meet its legal or regulatory obligations.
- 9.8. Safeguards. Taking into account the state of the art, the costs of implementation, and the nature, scope, context and purpose of processing as well as the varying risks to rights and freedoms of natural persons, the parties warrant that for the duration of this Agreement they will implement administrative, technical and physical safeguards sufficient to ensure the security and

confidentiality, and protect against the unauthorised or accidental destruction, loss, alteration, use, or disclosure, of Personal Data and other records and information of the end-customers or employees and to protect against anticipated threats or hazards to the integrity of such information and records.

10. LIMITATION OF LIABILITY

- 10.1. This clause 10 sets out the entire financial liability of each party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other party:
- 10.1.1. arising under or in connection with this Agreement;
 - 10.1.2. in respect of any use made by the Customer of the Services and the Deliverables or any part of them; and
 - 10.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 10.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 10.3. Nothing in this Agreement limits or excludes the liability of either party for death or personal injury resulting from negligence or for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party.
- 10.4. Subject to clause 10.3 and excluding any provisions where an indemnity is provided by either party:
- 10.4.1. neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - 10.4.2. each party's total liability to the other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement will be limited to the Charges paid or payable for the Services provided to the Customer by P+P in the 12 months prior to the claim giving rise to such claim for damages (to be multiplied on a pro rata basis where the Service has been provided for less than 12 months).
- 10.5. DUE TO THE EVER CHANGING NATURE OF THE INTERNET, LAWS AND REGULATIONS AND CYBER SECURITY, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, P+P (INCLUDING ITS CORPORATE GROUP, THIRD PARTY SUPPLIERS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES AND OFFICERS MAKE NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE THIRD PARTY MATERIALS, SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO THE ACCURACY AND COMPLETENESS OF ANY ADVICE OR INFORMATION PROVIDED BY P+P, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY PRODUCTS.

11. TERM & TERMINATION

- 11.1. The Services for the applicable Brief will be provided from the Commencement Date specified in the Brief until the Brief is complete, or upon the earlier termination of this Agreement.
- 11.2. Without limiting any other rights or remedies, either party ("**Terminating Party**") may terminate this Agreement with immediate effect by providing written notice to the other party ("**Defaulting Party**") on or at any time after the occurrence of any of the events specified below:
- 11.2.1. a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 14 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so;
 - 11.2.2. an event, including (or similar in nature to) the following:
 - a) the Defaulting Party is unable to pay its debts as they fall due;
 - b) the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily;
 - c) a receiver is appointed in respect of the whole or any part of the Defaulting Party;
 - d) a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
 - e) the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.3. If this Agreement terminate for any reason, the full Charges set out in the Brief will become due and payable immediately and P+P will have no obligation to repay any Charges or other fees paid by the Customer.
- 11.4. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

12. FORCE MAJEURE

Neither party shall in any circumstances have any liability to the other party under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes or illness involving the workforce of P+P or any of the Third Party Suppliers, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. If the force majeure event continues for a period of four weeks or more, the unaffected party may terminate this Agreement by providing the other party with written notice.

13. VARIATION

- 13.1. P+P reserves the right at any time to update this Agreement and to impose new or additional terms. If the Customer continues to use the Services after being notified of any such modification or additional terms, the Customer will be deemed to have accepted these changes and they will be incorporated into this Agreement.
- 13.2. Subject to clause 13.1, no variation of this Agreement will be effective unless it is in writing and signed by the authorised representatives of the parties.
- 13.3. If the Customer wishes to make a change to the scope of the Brief, P+P has no obligation to accept the change unless and until the parties have agreed in writing on the necessary variations to the Charges and any other relevant terms of this Agreement or the Brief to take account of the change.

14. MISCELLANEOUS

- 14.1. 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. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that are not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.2. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy. The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.3. The Customer shall not, without the prior written consent of P+P, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. P+P may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.4. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.5. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 14.6. If any provision or part-provision of this Agreement are or become invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 14.7. All notices must be in writing and are deemed given when mailed by registered or certified mail, return receipt requested, to the other party's main business address. It is agreed that serving notice by email or fax will not be an effective method of providing notice of a claim under this Agreement.

15. LAW AND JURISDICTION

This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.