

## 28B LTD TERMS AND CONDITIONS (PURCHASE OF SERVICES)

### 1 DEFINITIONS

1.1 In this Agreement, the following words shall have the following meanings:

**"28B"** means 28B Limited a company incorporated in the England and Wales whose registered office is at Centenary House, St Mary's Street, Huntingdon, Cambridgeshire, PE29 3PE.

**"Agreement"** means together the Quotation and these Terms and Conditions.

**"Confidential Information"** means any information that (a) is marked confidential or is otherwise identified as confidential, or (b) even if it is not marked "confidential" a reasonable person would recognise as information that ought to be treated as confidential information including tools, know-how, formulae and processes, technical and non-technical data, patterns, compilations, programs, methods, techniques, databases, contractual information, Client information, Client Data and any other relevant information furnished by the recipient by and on behalf of the other party under the Agreement.

**"Client"** means the entity identified in the Quotation.

**"Client Data"** means any data (including any personal data relating to staff, Clients/clients or suppliers of the Client or its clients), documents, text, drawings, diagrams, specifications, images (together with any database made up of these) supplied or made available to 28B by or on behalf of the Client or its clients, or which 28B is required to generate, process, store or transmit pursuant to this Agreement.

**"Data Protection Legislation"** means the European Data Protection Directive (95/46/EC) and the European Privacy and Electronic Communications Directive (as amended from time to time) and any legislation implementing those Directives in any country.

**"Deliverables"** means the specific to be delivered to the Client as part of the Services as detailed in the Quotation.

**"Fees"** means the total sum to be paid by the Client as stated on the Quotation and any agreed expenses to 28B.

**"Intellectual Property Rights"** means all patents, rights to inventions, copyright and related rights, moral rights, database rights, semiconductor topography rights, utility models, rights in designs, trademarks, service marks, trade names, domain names, rights in goodwill, rights in undisclosed or confidential information, and other similar or equivalent rights or forms of protection as may now or in the future exist anywhere in the world.

**"Personnel"** means all personnel required to perform the Services

**"Quotation"** means the document setting out amongst other things the Client details, Deliverables and Fees.

**"Services"** means the services provided to the Client as specified in the Quotation.

**"Software"** means the software provided by 28B and set out in the Quotation.

### 2 THE SERVICES

2.1 This Agreement shall be deemed accepted upon signing the Quotation or upon commencement of the Services. 28B shall provide the Services from the date specified on the Quotation. 28B shall provide the Services to the Client in accordance with the Client's reasonable requests from time to time, best industry practice and the terms of this Agreement.

2.2 28B warrants that; (a) it will perform the Services in a professional manner;

- and (b) each of its Personnel are suitably qualified and trained in order to provide the Services;
- 2.3 The Client shall: (a) fully brief 28B and ensure the accuracy of any materials it provides to it in the performance of the Services; (b) pay the Fees and agreed costs and expenses, (c) warrant that you have the permission and / or copyright to use all elements of text, images or other artwork provided to 28B and (d) be responsible for the accuracy, completeness and proprietary of information concerning any Client Materials which are provided to 28B.
- 2.4 Each party warrants, undertakes and represents on an ongoing basis that:
- (a) it has full capacity and authority to enter into and perform its obligations under this Agreement;
  - (b) it is in compliance with all applicable laws, regulations and codes of practice;
  - (c) it will not do any act or make any omission in relation to the performance of its obligations under this Agreement which does or may adversely materially affect the reputation of the other party; and
  - (d) the Deliverables are complete, accurate, non-infringing and compliant in all respects with this Agreement.
- 2.5 Any change to the Services shall be recorded in writing by the parties. 28B shall inform the Client on any changes to the Fees or the timings of delivery of the Services as a result of such change.
- 2.6 The Client shall be responsible for developing an appropriate acceptance test plan and testing various scenarios in order to ensure adequate acceptance testing is performed at the time of installation of any Deliverable.

### **3 FEES**

- 3.1 28B shall be entitled to invoice the Client in accordance with the agreed invoicing schedule set out in the Quotation.
- 3.2 The Client shall pay the Fees for the Services within 30 days of the date of invoice or as stated in the Quotation if different. Fees shall be paid in the currency shown in the Quotation.
- 3.3 All sums payable by the Client to 28B are (a) exclusive of VAT; (b) shall be paid without deduction, withholding or set-off.
- 3.4 Expenses incurred by 28B in the provision of the Services, including but not limited to travel and subsistence, and any goods and services purchased on the Client's behalf, will be re -charged to the Client.
- 3.5 28B may charge interest on any undisputed overdue sum at the rate of 2% above the Bank of England base rate per annum.

### **4 TERMINATION**

- 4.1 Either party may terminate this Agreement, in whole or (with a proportionate reduction in the Fee) in part, at any time:
- (a) for convenience on thirty (30) days' written notice to the other party; or
  - (b) immediately if the other party is in material breach of this Agreement which is not remedied within 14 days of that party being given notice to do so; or
  - (c) immediately if an order is made or a resolution is passed for the winding up of the party, or the party has a receiver or administrator appointed of any part of its assets, or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or a court to make a winding up or administration order, or makes an arrangement with creditors or if the party is unable to pay its debts as and when they fall due.
- 4.2 The Client shall pay all fees and committed costs payable to the date of termination.

- 4.3 Upon expiry or termination of this Agreement or of any part of the Services, 28B will deliver all Confidential Information to the Client and liaise with the Client and/or third party to ensure a satisfactory handover.
- 4.4 Expiry or termination of this Agreement shall be without prejudice to any rights accrued up to the date of termination or any provisions which expressly or impliedly survive termination.

## 5 LIABILITY

- 5.1 Nothing in this Agreement shall exclude or limit either party's liability in respect of any claims:
- (a) for death or personal injury caused by the negligence of such party; or
  - (b) resulting from any fraud including fraudulent misrepresentation made by such party; or
  - (c) for which liability may not otherwise lawfully be limited or excluded.
- 5.2 Subject to Clause 5.1, neither party shall not be liable for any indirect, special or consequential losses or any loss of profits (whether direct or indirect), loss of goodwill, loss of business, loss of revenue or loss of anticipated savings.
- 5.3 Subject to Clauses 5.1 and 5.2, the parties total aggregate liability arising from or related to this Agreement (whether in contract, tort including negligence or otherwise) shall not exceed an amount equal to the Fees paid or payable to 28B by the Client under this Agreement in the twelve (12) months preceding the event that triggered such liability.
- 5.4 The Client shall indemnify and hold 28B harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including all reasonable legal and other professional fees and expenses) awarded against, or incurred or paid by, 28B as a result of or in connection with any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of or in connection with the provision of any content and/or materials provided by the Customer to 28B as part of the Services.

## 6 INSURANCE

28B shall take out and maintain with a reputable third party insurer insurance in respect of its professional indemnity liability.

## 7 DATA PROTECTION

- 7.1 If the provision of the Services requires the processing of personal data by 28B on behalf of the Client, 28B will comply with the seventh principle in the Data Protection Legislation and:
- (a) comply with the Data Protection Legislation;
  - (b) act only on the instructions of the Client as data controller;
  - (c) at all times take all appropriate technical, operational, managerial, physical, organisational measures in accordance with prevailing practices of care, skill, professionalism and diligence to safeguard against unauthorised or unlawful processing of personal data and against any unauthorised or unlawful accidental loss, destruction of, or damage to, personal data and ensure the security of such personal data;
  - (d) shall not delete, transfer, remove or otherwise process any of the Client's data, except in accordance with the Client's instructions or the terms of this Agreement;
  - (e) shall inform the Client promptly and in any event within 48 hours if at any

time there is a breach of this Clause 7, or any personal data is or is suspected to be lost, corrupted, used or disclosed to a third party otherwise than in accordance with this Agreement.

## 8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 Subject to Clause 8.2 and 8.3, the Client shall own the Intellectual Property Rights in the Deliverables (which for the avoidance of doubt does not include the Software or any third-party rights contained in the Deliverables) and 28B irrevocably and unconditionally assigns with full title guarantee to the Client all and any Intellectual Property Rights, upon creation of the same, in the Deliverables. 28B shall, and shall procure that its Personnel waive in favour of the Client absolutely and irrevocably their moral rights (if any) in relation to such Deliverables.
- 8.2 Nothing in this Agreement is intended to affect 28B's ownership of materials used or developed by it independently of the Services or 28B's generic methodologies, tools, technology or processes which are used by it (but not developed by it) in the performance of the Services (together the "**Pre-Existing Materials**"). If 28B's Pre-Existing Materials (or part thereof) are incorporated in the Deliverables, or required to use or exploit the Services, 28B hereby grants to the Client a non-exclusive, non-transferable, royalty-free licence to use the 28B's Pre-Existing Materials to enable the Client to obtain the full benefit of the Services only.
- 8.3 Nothing in this Agreement shall be deemed to transfer any ownership, right, title and / or interest, including all copyright, patent and / or trade secrets in the background technology in the Software including all licensed and sub-licensed Pre- Existing Materials, development tools, routines, subroutines, data and materials developed and included by 28B in the Software.
- 8.4 28B warrants and represents that it has the right to assign or license all Intellectual Property Rights granted or assigned pursuant to this Agreement and that the grant and terms of its respective assignment or licence shall not infringe the Intellectual Property Rights of any third party.
- 8.5 28B shall not acquire any right, title or interest in or to any Intellectual Property Rights owned by or licensed by any third party to the Client by reason of this Agreement and 28B acknowledges that all such Intellectual Property Rights remain the property of the Client and/or its licensors.

## 9 CLIENT MATERIALS

- 9.1 Title to any property of the Client provided to 28B for the performance of the Services shall remain with the Client.
- 9.2 Subject to reasonable prior notice, the Client shall be entitled to retake possession of their property at any time from 28B.
- 9.3 28B shall only use the property of the Client in connection with the performance of the Services to which they relate.

## 10 GENERAL

- 10.1 Both parties shall during this Agreement and for a period of 2 years thereafter, keep confidential all Confidential Information and shall not use or disclose such Confidential Information to any third party except as may be strictly necessary in order to perform the Services or as required by law.
- 10.2 Neither party may assign, subcontract or in any way transfer any of their rights or obligations under this Agreement without the prior written consent of the other party.
- 10.3 Each provision of this Agreement is severable and distinct from the others. Invalidity or unenforceability of a specific provision shall not affect the other provisions of this Agreement.

- 10.4 Any failure to exercise or any delay in exercising a right or remedy provided this Agreement or at law or in equity shall not constitute a waiver of the rights or remedies or a waiver of any other rights or remedies.
- 10.5 Nothing in this Agreement shall be construed as establishing or implying any partnership or agency relationship between the parties.
- 10.6 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with within it and supersedes any previous agreement between the parties relating to such matters. This Agreement may only be amended in writing with the agreement of the Client and 28B
- 10.7 No person who is not a party to this Agreement has any rights under the Contracts (Rights of Third Parties) Act 1999.
- 10.8 Any notice required to be given under this Agreement shall be in writing and shall be validly served only if sent to the other at the address on the Quotation by hand, by registered first class post or special delivery.
- 10.9 This Agreement and any non-contractual obligations shall be governed by English law and the parties agree to submit any dispute to the exclusive jurisdiction of the English Courts

## Contact

Questions, comments and requests regarding these Terms and Conditions are welcomed and should be addressed to [INFO@28B.CO.UK](mailto:INFO@28B.CO.UK).

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