# AGENCY TERMS AND CONDITIONS

**IT IS AGREED BETWEEN THE PARTIES THAT:**

**1.      Definitions**

1.1.    In this Agreement, the following terms shall have the following meanings:

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| | "**Agreement**"means these Agency Terms and Conditions and its Schedules together; |
| **"Company"** | means More Onion Limited; |
| "**Confidential Information**" | means any information of a confidential or sensitive nature (whether disclosed orally, in writing, or any other media and whether or not such information is expressly stated to be confidential or marked as such) in relation to the Company or a Customer. This includes technology, technical processes, IPR, business affairs, client lists, finances, trade secrets (including any specialist courseware, software and manuals), secret or confidential operations processes or dealings, details or lists of Customers, details of fees charged by the Company, the subject matter contained in courses run by and/or services provided by the Company or any other information concerning the organisation, business or financial or affairs of the Company or its Customers or business associates, including all notes, memoranda, records and writings made by the Consultant in relation to the Company and/or its Customers, which has or may have come to the Consultants' knowledge pursuant to or in contemplation of this Agreement or in connection with the Agency Services to be provided by the Consultant hereunder; |
| **"Consultant"** | means employees, agents and contractors of the Company; |
| **"Agency Services"** | means the Agency services to be provided by the Consultant to Customers under the Agreement from time to time, as set out in the Order Form; |
| **"Content"** | means any design, software, source code, artwork, copy, drawing, data, specification, annual, content or other information (on whatever media stored including but not limited to electronic and printed media and materials) used or created by the Company (or its Consultants) in providing the Agency Services; |
| **"Customer"** | means the customer named in the Order Form; |
| **"Customer Data"** | means any data provided by the Customer to the Company (or its Consultants) to use in creating or providing the Agency Services; |
| **"DPA"** | means the data processing agreement set out in Schedule 1 of this Agreement; |
| **"Effective Date"** | means the start date of this Agreement as set out in the Order Form; |
| **"Fees"** | means the fees set out in the Order Form for provision of the Agency Services; |

| "**IPR**" | means all copyrights, patents, utility models, trademarks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world; |
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| "**Order Form**" | means the order form set out in Schedule 2 of this Agreement. |

## 2. Appointment

2.1. The Customer appoints the Company to provide the Agency Services to the Customer using its Consultants subject to the terms of this Agreement.

## 3. Term

3.1. This Agreement shall commence on the Effective Date and shall (subject to the provisions of clause 13 - termination) continue unless or until terminated by either party giving the other at least thirty (30) days notice in writing.

3.2. Notwithstanding clause 3.1 above, if the Customer serves notice to terminate this Agreement under the provisions of clause 3.1, such termination shall have no effect on any work which is already being performed pursuant to an Order Form or on any work to be performed under an Order Form already signed by the Customer, at the time of the service of such notice to terminate.

## 4. Obligations of the Company

The Company shall:

4.1. Provide the Agency Services to the Customer on a non-exclusive, "when-needed" basis as set out in each Order Form at such times and at such locations as the Company and the Customer agree in writing from time to time.

4.2. Ensure that any Consultants providing the Agency Services on the Company's behalf under the Agreement comply with these Agency Terms and Conditions and the DPA to the extent required to enable the Company to perform its obligations in compliance with the terms of this Agreement.

4.3. Provide the Agency Services with reasonable care and skill and to the best of its ability and to the standard expected of a competent consultant having the skills and abilities necessary to provide the Agency Services.

4.4. Keep detailed records of all acts and things done by the Consultant in relation to the provision of the Agency Services and shall make such records available for inspection by the Customer and/or provide copies to the Customer.

## 5. Obligations of the Customer

The Customer shall:

5.1. Provide or arrange such reasonable support, assistance, materials and equipment (which shall be at the Customer's expense) as the Company may reasonably require to enable it to properly provide the Agency Services.

5.2. Provide office and administrative facilities at the Customer's expense in connection with any Agency Services.

5.3. Provide the Company promptly with information the Company reasonably requires so that the Consultant is not delayed in performing its obligations under this Agreement.

**6. Fees, Invoicing and Payment**

6.1.           Fees shall be calculated as set out in each Order Form.

6.2.           All Fees are exclusive of Value Added Tax, which shall be added, where applicable.

6.3.           The Company shall invoice the Customer the Fees as set out in each Order Form.

6.4.           The Customer shall pay the Company all Fees within 14 days of the date of each invoice, unless specified otherwise in an Order Form.

6.5.           The Company shall charge the Customer for any expenses that it occurs in providing the services in addition to the Fees and shall provide receipts for such expenses.

6.6.           The Company shall provide the Customer on request with time sheets setting out the work carried out by the Consultant under an Order Form.

**7. Relationship Between the Parties**

7.1.           The Company (and its Consultants) are independent contractors and are not the servant, employee, partner, representative or agent of the Customer and have no power or authority to enter into any contract on behalf of the Customer.

7.2.           The parties agree that as an independent contractor, the Company (and its Consultants) shall not be entitled to any pension, bonus, sick pay, holiday or other fringe benefits from the Customer.

7.3.           The Company shall be responsible for paying the salaries or fees of all Consultants.

**8. Amendments to the Agency Services**

8.1.           The Customer acknowledges that the Company may amend the scope of the project and the provision of the Agency Services at any time in order to reflect changes in the requirements or needs of the parties during the Term of this Agreement.

**9. Confidential Information**

9.1.           The Company agrees and procures that the Consultant shall treat as secret and confidential and not at any time for any reason disclose or allow to be disclosed (except for the purposes of performing the obligations imposed on it by this Agreement) any Confidential Information of the Customer, without the prior written consent of the Company and (where applicable) a Customer. Notwithstanding the aforesaid the Customer agrees that the Company is entitled to use a project description, along with the Customer's logo and name for its own marketing purposes, unless the Customer notifies the Company in writing of its objection to such use in any individual case.

9.2.           The provisions of this clause shall not apply to information which:

        9.2.1    Is, or subsequently becomes, part of the public domain, otherwise than by any breach of this Agreement by the Consultant;

        9.2.2    Is ordered to be disclosed by any court or by any governmental or other authority or regulatory body.

9.3.           The Company shall and procures that the Consultant shall return (or upon request destroy) all Confidential Information in its possession or under its control at the end of each Order Form within sixty days of receiving a written request from the Customer and shall delete all Confidential Information from any disks, tapes or other re-useable material in its possession.

## 10. Intellectual Property

10.1. All existing and future IPRs in the Agency Services, (including Content and all software contained therein) provided to the Customer under any Order Form will vest solely and exclusively in the Company. The Customer shall have no title, right or interest whether legal or beneficial in any such IPRs including any source code contained therein.

10.2. All Content is provided to the Customer ("as is"). The Company is not responsible for any breaches of the IPRs of a third party caused by the Customer using any Content the Company provides to the Customer as part of the Agency Services. It is the solely and exclusive duty of the Customer to check and ensure that use of any Content does not breach the IPRs of a third party.

10.3. The Customer shall retain sole ownership of all rights, title and interest in and to Customer Data and its pre-existing IPR and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and its pre-existing IPR. The Customer grants the Company a non-exclusive, licence to use Customer Data, Customer pre-existing IPR and any third party owned item to the extent required for the Company to provide the Agency Services.

## 11. Data Protection

11.1. Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements and the terms of the DPA.

11.2. To the extent that the personal data of the Customer is processed by the Company providing the Agency Services set out in an Order Form, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties shall comply with their respective statutory data protection obligations.

11.3. If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

## 12. Liability

12.1. The parties do not exclude or limit their liability to each other for fraud, death or personal injury caused by their negligent act or omission or wilful misconduct.

12.2. The Company shall not be liable for any pure economic loss, indirect losses, consequential loss, special loss or damages arising out of or related to this Agreement or in tort (including negligence or breach of statutory duty), misrepresentation or however arising.

12.3. The Company shall not be liable for any loss of profits related to this Agreement, whether based on contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise.

12.4. Subject to clauses 12.1 to 12.3 inclusive the total liability of the Company to the Customer in aggregate (whether in contract, tort or otherwise) for any and all claims relating to or arising under this Agreement or based upon any claim for indemnity or contribution shall be limited to the amount paid to the Customer by the Company under the respective Order Form (excluding all taxes) during the 12 month period prior to the date on which such claim arose. If the duration of the Agreement has been less than 12 months, the amount payable shall be pro rata.

12.5. Neither party shall raise any claim under this Agreement more than 1 year after the discovery of the circumstances giving rise to a claim or the effective date of termination or expiry of this Agreement.

12.6. The Company shall be liable for all acts and omissions of any Consultant performing the Agency Services on its behalf under this Agreement which result in a breach of the terms of this Agreement, as if such breach or breaches had been caused by the Company itself.

## 13.    Termination

13.1.    Without prejudice to any other rights hereunder and notwithstanding any other provisions of this Agreement, the Company shall have the right at any time by notice in writing to immediately terminate this Agreement if the Customer is:

13.1.1    In material breach of any term of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Customer within 7 days of receipt by them of a written notice from the Company giving full particulars of the breach and requiring it to be remedied;

13.1.2    Guilty of conduct which may bring the Company into disrepute or is otherwise prejudicial to the best interests of the Company;

13.1.3    Adjudicated bankrupt, makes any arrangement or composition with its creditors, commits any other act of bankruptcy, if a receiver is appointed over any of the property or assets of the Customer, if the Customer makes any composition or arrangement with its creditors, becomes subject to an administration order, if the Customer ceases or threatens to cease trading or the Customer goes into liquidation.

13.2.    Termination of this Agreement for any reason shall not affect any rights or obligations of either party which have accrued prior to such termination and shall not affect the provisions of this Agreement which are intended (either expressly or by implication) to come into or remain in force after termination.

13.3.    On termination or expiry of this Agreement (for whatever reason) each party shall deliver to the other all Confidential Information of the other party in its possession custody or control and no copies of any such material shall be retained by the receiving party.

## 14.    Miscellaneous

14.1.    Each party acknowledges that it has not entered into this Agreement in reliance on any statement or representation, whether or not made by the other party, except in so far as the representation has been incorporated into this Agreement.

14.2.    Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

14.3.    In the event of any inconsistency between the content of this Agreement and its Schedules, the terms of the Order Form, shall prevail followed by the DPA and then the Agency Terms and Conditions.

14.4.    This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions between the parties relating to the subject matter thereof.

14.5.    Amendments to, or notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post or by email in electronically scanned documents i.e. pdf, jpeg to a party at the address given for that party in this Agreement.

14.6.    Nothing contained in this Agreement is intended to be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999, or any similar legislation in any applicable jurisdiction.

14.7.    Each party shall pay its own costs and expenses incurred by it in the negotiation and preparation of this Agreement, unless specified otherwise.

### 15. Dispute Resolution

15.1. The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.

15.2. If any such dispute cannot be settled amicably through ordinary negotiations of the sales directors of each party, the dispute shall be escalated in writing to a director of the Consultant and a director of the Company who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within 14 days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with clause 16 below.

### 16. Governing Law and Jurisdiction

16.1. This Agreement shall be governed by the laws of England and Wales. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.