Terms and Conditions of Supply and Services

The boring, but important bits

Terms and Conditions of Supply and Services – DNA

1 Definitions and Interpretation

1.1 In these terms the following words have the following meanings:

"Business Day" a day when the banks are usually open for business in the City of London (but not a Saturday or Sunday);

"Charges" the charges for the Services as set out on the Proposal;

"Client" the firm or company who requests the Services from the Consultant as identified on the Proposal;

"Client Materials" all documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to the Consultant in connection with the Services;

"Client's Representative" the person nominated by the Client to be the first point of contact in respect of any issues arising under the Contract as set out on the Proposal;

"Confidential Information" without limitation, secret or confidential commercial, financial, marketing, technical or other information (including, without limitation) know-how, trade secrets, price lists, the Contract, the content of the Contract and other information in any form or medium whether disclosed orally or in writing before or after the Commencement Date, together with any reproductions of such information in any form or medium or any part(s) of this information (and **"confidential"** means that the information, either in its entirety or in the precise configuration, is not publicly available);

"Consultant" We Are DNA Limited registered in England and Wales with company number 08451517 whose registered office is at Suite 5 Corum 2, Corum Office Park, Crown Way, Warmley, Bristol, BS30 8FJ;

"Consultant's Representative" the person nominated by the Client to be the first point of contact in respect of any issues arising under the Contract as set out on the Proposal;

"Contract" these terms and the relevant Proposal;

"Data Processing Schedule" the Schedule included on the Proposal which sets out the scope, nature and purpose of processing, the duration of the processing and the types of personal data and categories of data subject;

"Data Protection Legislation" all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

"Deliverables" the output of the Services to be provided by the Consultant as specified on the Proposal and any other documents, products and materials provided by the Consultant in relation to the Services;

"Email Confirmation" the email confirmation setting out the details of the Contract;

"Force Majeure" any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (except payment) under the Contract including without limitation acts of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected Party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

"Intellectual Property" all intellectual property rights including (without limitation) any patent, copyright, rights in software, database right, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) moral right, design right, registered design, trade mark, service mark, domain name, utility model, unregistered design or any other such right or other industrial or intellectual property right, in each case whether registered or unregistered, which subsists or will subsist now or in the future in any part of the world;

"Parties" the Consultant and the Client (each a **"Party"**);

"Personnel" the employees of or persons otherwise engaged by the Consultant or any employees of or persons otherwise engaged by any sub-contractor of the Consultant in the Services;

"Proposal" the proposal document issued by the Consultant which sets out the details of the Contract;

"Services" the services set out on the Proposal and as further agreed in writing by the Consultant from time to time.

1.2 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2 How the Contract is formed

2.1 The Client's order, or acceptance of a Proposal, shall be deemed to be an offer by the Client to purchase the Services subject to these terms.

2.2 The order shall only be deemed accepted when the Consultant issues an Email Confirmation, at which point the Contract shall come into existence (**"Commencement Date"**).

2.3 The Contract shall relate only to the Services confirmed in the Email Confirmation.

3 Application of terms

3.1 These terms shall apply to and be incorporated into the Contract.

3.2 These terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3.3 Unless otherwise agreed in writing, any Proposal issued by the Consultant is only valid for a period of 20 Business Days from its date of issue.

4 Variations to the Contract

4.1 If the parties want to vary the Contract or the Services, the variations must be in writing and signed by an authorised signatory of each Party.

5 Provision of the Services

5.1 The Client appoints the Consultant to provide the Services in exchange for the Charges.

5.2 The Consultant shall:

(a) ensure the Services are provided with reasonable skill and care;

(b) ensure the Services are performed by appropriately qualified, experienced and trained Personnel;

(c) comply with all relevant legislation, regulations, codes of practice, guidance notes and other requirements of any relevant government or governmental body;

(d) provide the Services in accordance with these terms and comply with any reasonable instructions issued by Client from time to time, as well as the safety and security standards of the Client;

(e) supply the Client with the information it reasonably requires about the provision of the Services; and

(f) use reasonable endeavours to ensure the Services are performed in compliance with any performance dates set out on the Proposal, but any such dates shall be estimates only and time for performance shall not be of the essence of the Contract.

6 Client's obligations

6.1 The Client shall:

(a) ensure that the contents of the Proposal are complete and accurate;

(b) co-operate with the Consultant in all matters relating to the Services;

(c) provide the Consultant with such information and materials as the Consultant may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and

(d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Commencement Date.

6.2 If the Consultant's performance of any of its obligations under the Contract, is prevented or delayed by any act or omission of the Client or failure by the Client to perform any relevant obligation:

(a) without limiting or affecting any other right or remedy available to it, the Consultant shall have the right to suspend performance of the Services until the Client remedies the default, and to rely on the Client's default to relieve it from the performance of any of its obligations in each case to the extent the Client's default prevents or delays the Consultant's performance of any of its obligations;

(b) the Consultant shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Consultant's failure or delay to perform any of its obligations as set out in this clause 6; and

(c) the Client shall reimburse the Consultant on written demand for any costs or losses sustained or incurred by the Consultant arising directly or indirectly from the Client's default.

7 Price and Payment

7.1 The Charges for the Services shall be the amount set out on the Proposal.

7.2 The Charges do not include VAT, which is payable by the Client in addition and is shown separately on the Consultant's invoices.

7.3 The Client agrees to reimburse the Consultant for any out of pocket expenses (including, without limitation, any travel, accommodation and subsistence expenses) incurred in accordance with the rates set out in the Proposal, as long as they are incurred while the Consultant is providing the Services.

7.4 The Consultant shall issue its invoice for the Services on the delivery or completion of the milestones set out in the Proposal (or on the last day of the month if no milestones are set out in the Proposal), for all Services performed and expenses incurred.

7.5 The Client must pay the Charges within 15 days of the date of each invoice. If the Client does not pay the Charges within 15 days, the Consultant is entitled to add the following charges:

(a) a one-off late payment charge equivalent to 7.5% of the value of the unpaid amount; and/or

(b) interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.5(b) will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.6 Any other late payment charges will be payable immediately by the Client when notified by the Consultant. This clause is without prejudice to the Consultant's other rights and remedies under the Contract.

7.7 If the Client receives an invoice which it reasonably believes is not valid and properly due, it agrees to notify the Consultant within 5 Business Days of the date of the invoice. If the Client fails to notify the Consultant within 5 Business Days of the date of the invoice, it shall be deemed to have accepted the invoice.

7.8 If the Client requires the purchase order number to be included on the Consultant's invoice, the Client agrees to provide the Consultant with a purchase order at least 5 Business Days prior to the date on which the initial invoice is due (in accordance with clause 7.4).

7.9 The Consultant reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12 month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

8 Confidentiality

8.1 All Confidential Information belonging to one Party that is disclosed or obtained as a result of the relationship of the Parties under the Contract shall be kept secret and confidential by the other Party. Each Party shall not use or disclose the Confidential Information except to perform the Contract or if the other Party gives prior written consent. Each Party may disclose the other Party's Confidential Information to its employees, officers, representatives 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 or advisers to whom it discloses the other Party's Confidential Information comply with this clause 8.

8.2 Confidential Information does not include information in the public domain (except when it entered the public domain through a breach of the Contract); or in either Party's written records prior to the date of the Contract; independently disclosed to either Party by a third party; or required to be disclosed under any applicable law, or by order of a court or governmental body or other competent authority.

9 Limitation of Liability

9.1 The following provisions set out the entire financial liability of the Consultant (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

(a) any breach of the Contract howsoever arising;

(b) any use made by the Client of the Services, the Deliverables or any part of them; and

(c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in the Contract excludes or limits a Party's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.

9.4 Subject to clause 9.2 and clause 9.3:

(a) the Consultant shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits; loss of business; depletion of goodwill or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss or corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;

(b) the Consultant's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Charges paid by the Client in the previous 3 month.

10 Meetings

The Consultant's Representative shall meet with the Client's Representative regularly to discuss the Services. The frequency of these meetings shall be set out on the Proposal.

11 Data Protection

11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.2 The parties acknowledge that, for the purposes of the Data Protection Legislation, the Client is the controller and the Consultant is the processor. The Data Processing Schedule (set out on the Proposal) sets out the scope, nature and purpose of processing by the Consultant, the duration of the processing and the types of Personal Data and categories of Data Subject (all as defined in the Data Protection Legislation).

11.3 Without prejudice to the generality of clause 11.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Consultant for the duration and purposes of the Contract.

11.4 Without prejudice to the generality of clause 11.1, the Consultant shall, in relation to any personal data processed in connection with the performance by the Consultant of its obligations under the Contract:

(a) process that personal data only on the written instructions of the Client, unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to process Personal Data (**"Applicable Laws"**);

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that all Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Client has been obtained and appropriate safeguards have been put in place;

(e) notify the Client without undue delay on becoming aware of a Personal Data breach;

(f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination unless required by Applicable Law to store the Personal Data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.

11.5 The Client consents to the Consultant appointing third party service providers and email marketing service providers as third party processor of personal data under the Contract. The Consultant confirms that it has entered into, or (as the case may be), will enter into, a written agreement with the third party processor substantially on that third party's standard terms of business. As between the Client and the Consultant, the Consultant shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 11.

12 Intellectual Property

12.1 All Intellectual Property owned by the Client prior to the Commencement Date remains the property of the Client. All Intellectual Property in the Client Materials provided to the Consultant by, or on behalf of the Client, remains the property of the Client.

12.2 The Client grants the Consultant a non-exclusive, royalty-free, transferable licence to use, copy and modify the Client's Intellectual Property and the Client Materials for the term of the Contract and for the purposes of providing the Services.

12.3 All Intellectual Property owned, or licensed by, the Consultant before the Commencement Date, whether or not it is used in connection with the Contract, remains the property of the Consultant or the relevant licensor (as the case may be).

12.4 Any Intellectual Property in the Deliverables shall (as far as it is not already owned by the Consultant) vest in the Consultant, or its third party sub-contractors, on the date when it is created and shall be included in the Consultant's Intellectual Property.

12.5 The Consultant grants the Client a non-transferable, royalty-free licence to use the Deliverables for its own internal business purposes. The Consultant further agrees that it will, at the Client's expense, do or sign anything reasonably necessary to give effect to the licences granted by this clause 12.5. To the extent that the Deliverables contain rights owned by a third party, then the Consultant shall only be obliged to use reasonable endeavours to obtain corresponding rights for the Client to use and exploit these third party rights.

12.6 The Client shall have no right to modify or amend the Deliverables or sub-licence the rights granted at clause 12.5. If the Client wishes to acquire ownership of the intellectual Property in the Deliverables, it shall submit a written request to the Consultant and the Consultant shall confirm the additional charges payable by the Client in respect of any such assignment.

12.7 Regardless of any provision of the Contract to the contrary, the Consultant shall own any internal records it produces or generates relating to the Services. Additionally, the Consultant is entitled to retain copies of its work papers and work products required for its internal records and to comply with legal and professional standards.

12.8 The Client:

(a) warrants that the receipt and use of the Client Materials by the Consultant, or its third party sub-contractors, shall not infringe the rights, including any Intellectual Property of any third party; and

(b) shall indemnify the Consultant in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Consultant arising out of, or in connection with, any claim brought against the Consultant, or its third party sub-contractors, for actual or alleged infringement of a third party's Intellectual Property arising out of, or in connection with, the receipt or use in the performance of the Contract of the Client Materials.

13 Term, Termination and Consequences of Termination

13.1 The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier, in accordance with this clause 13, until either party gives the other party three months' written notice to terminate the Contract.

13.2 Either Party may immediately suspend further performance of the Contract; cancel any outstanding provision of the Services; or terminate the Contract by notice in writing to the other Party without having any liability to the other Party if:

(a) the other party fails to pay any amount due under the Contract on the due date and remains in default not less than seven days after being notified in writing to make such payment;

(b) the other Party commits a material breach of any of its obligations under the Contract which cannot be remedied;

(c) under the circumstances set out in clause 14.5;

(d) the other Party fails to remedy a material breach of its obligations under the Contract which is capable of remedy, or persists in any material breach of any of its obligations under the Contract after 15 days of having been requested in writing by the other Party to remedy or desist from such breach;

(e) the other Party proposes a voluntary arrangement (defined in Section 1 or Section 253 of the Insolvency Act 1986), or an interim order against the other Party under Section 252 of the Insolvency Act 1986, or any other steps are taken or negotiations begun by the other Party or any of its creditors with the intention of proposing any kind of composition, compromise or arrangement involving the other Party and any of its creditors;

(f) the other Party is unable to pay its debts under Section 123 of the Insolvency Act 1986, or calls a meeting for the purpose of passing a resolution to wind it up, or such a resolution is passed, or a resolution is passed by the directors of the other Party to seek a winding up or administration order, or the other Party presents, or has presented, a petition for a winding up order, or presents, or has presented, a petition to appoint an administrator, or has an administrative receiver, or receiver appointed over all or any part of its business, undertaking, property or assets; and/or

(g) the other Party has any distress or execution raised on its assets which is not paid out within seven days.

13.3 The termination of the Contract, or of any of the Services, shall not prejudice the rights and remedies of either Party which may have accrued up to the date of such termination.

13.4 Upon termination of the Contract for any reason whatsoever:

(a) (subject to clause 13.3 above) the relationship of the Parties shall cease and any rights or licences granted under or by the Contract shall cease to have effect save as (and to the extent) expressly provided for in this clause 13.4;

(b) the provisions of clauses 8, 9, 12.8(b), 13.3, 13.4, 14, 15, 16, 17 and 18 and any provision which expressly or by implication is intended to come into or remain in force on or after termination shall continue in full force and effect;

(c) each Party shall promptly return to the other Party (or if the other Party so requests by notice in writing destroy) all property of the other in its possession including without limitation all of the other's Confidential Information and shall make no further use of such Confidential Information.

13.5 From the date the notice of termination is issued, the Consultant shall co-operate with Client (and/or any substitute consultant appointed by Client) in ensuring the smooth handover and continued running of the Services during that handover for a period of up to 1 month from the date of termination. The Consultant shall be entitled to invoice the Client for its reasonable costs incurred when providing such assistance and the Client shall pay the invoice within 15 days of its date.

13.6 Within 30 days of the expiry or termination of the Contract, the Consultant shall send its final invoice to the Client setting out the total amounts due to the Consultant and the Client shall pay the invoice within 15 days of the date of the invoice.

14 Force Majeure

14.1 If either Party is affected by Force Majeure, it shall immediately give written notice to the other Party describing the Force Majeure and shall keep that Party fully informed of any relevant change of circumstances whilst the Force Majeure continues.

14.2 The Party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under the Contract.

14.3 Except in the circumstances described in clause 14.5 below, Force Majeure shall not entitle either Party to terminate the Contract and neither Party is in breach of the Contract, or otherwise liable to the other, by reasons of any delay in performance, or non-performance of any of its obligations due to Force Majeure.

14.4 If the Party affected by Force Majeure fails to comply with its obligations under clauses 14.1 and 14.2 above, then no relief for Force Majeure, including the provisions of clause 14.3 above, is available to it and the obligations of each Party shall continue in force.

14.5 If the Force Majeure continues for longer than eight weeks, either Party may at any time whilst such Force Majeure continues, by notice in writing to the other, terminate the Contract in compliance with clause 13.2(c).

15 Subcontracting, Assignment and Third Party Rights

15.1 The Client shall not, without the prior written consent of the Consultant, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 The Consultant 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 the Contract.

15.3 No one other than a party to the Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

16 Notices

16.1 All notices given to a Party in connection with the Contract must be in writing and delivered by hand or sent by first class post or special delivery to the Party's registered office address set out on the Proposal (or such other address as notified in writing by them from time to time).

16.2 Notices are deemed to have been received:

(a) 2 Business Days after posting (exclusive of the day of posting) if sent by first class or special delivery post;

(b) on the day of delivery if delivered by hand or if that is not a usual business day, the first usual business day after delivery.

16.3 Notices addressed to the Client should be marked for the attention of Client's Representative. Notices addressed to the Consultant should be marked for the attention of the Consultant's Representative.

16.4 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.

17 General

17.1 Nothing in the Contract shall create, or be deemed to create a partnership or joint venture or employer-employee relationship or principal and agent relationship between the Parties.

17.2 If a Party fails to exercise any right or remedy provided under the Contract or by law, they shall not have waived that or any other right or remedy, and they shall not be precluded or restricted to exercise further that or any other right or remedy. A single or partial exercise of that right or remedy shall not preclude or restrict the further exercise of that or any other right or remedy.

17.3 If at any time, any one or more of the clauses of the Contract (or any sub-clause or clause or any part of one or more of these clauses) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, it shall be deemed to be omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result.

17.4 The Contract sets out the entire agreement between the Parties about the Services. Each Party irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind the Contract because of breach of any warranty not contained in the Contract or any misrepresentation whether or not contained in the Contract unless such misrepresentation was made fraudulently.

18 Law and Jurisdiction

18.1 The Contract 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.

18.2 The Contract is subject to the exclusive jurisdiction of the English courts to which the Parties irrevocably submit.