



Terms and Conditions of Business

Encodian Services Ltd

Version: 1.0

Last Updated: 10th April 2024

These Terms and Conditions must be read in conjunction with the related quotation or proposal.

“The Contract” means the Proposal and these Terms and Conditions which together form the contract.

“The Company” means Encodian Services Limited, a company incorporated in England and Wales under company number 15497538 and having its registered office at Blythe Valley Innovation Centre Central Boulevard, Blythe Valley Business Park, Solihull, England, B90 8AJ.

“The Customer” means the organisation that uses the Services having accepted the Proposal.

“Deliverables” means the tangibles to be delivered to the Customer as part of the Services and which are listed or specified in the Proposal, if any.

“IPR” means any and all patents, trademarks, service marks, domain names, registered designs, utility models, applications for the right to make applications for any such rights, inventions, know-how, unregistered trademarks and service marks, trade and business names, copyrights (including rights in computer software) unregistered design rights, copyrights in databases and all other rights of a similar effect or nature

“The Proposal” means the Proposal attached to these Terms and Conditions which sets out the Services and any Deliverables that are to be delivered to the Customer by the Company as part of this contract

“Results” means the end product of the Services

“Services” means the Services described in the Proposal to be delivered as part of this contract

1 The services

- 1.1 The company shall provide the services and in so doing shall exercise reasonable skill and care in the provision of the services. The customer acknowledges that the quality, the accuracy and the time of delivery of the results depends upon the quality and timeliness of the information provided by the customer to the company and on the customer's compliance with the requirements set out in clause 3. Where a timetable is referred to in the proposal the company will use reasonable endeavours to provide the services in accordance with that timetable.

2 Deliverables

- 2.1 The company will ensure that any deliverables conform to the description or specification contained in the proposal. Where acceptance criteria are specified in the proposal acceptance of the deliverables by the customer will be subject to such specified criteria. Where no acceptance criteria are specified the customer will be deemed to accept the deliverables on delivery.

3 Customer responsibilities

- 3.1 The customer will be responsible for the operation of its system including any back-up, security and virus checking procedures.
- 3.2 The customer will provide all information as required under the proposal in a timely manner and will be responsible for the accuracy of such information.
- 3.3 The customer will notify the company of its nominated staff involved in the project. Any changes to the customer's nominated staff will be notified to the company immediately.
- 3.4 The customer will ensure that the company has reasonable access to its staff, including senior management where necessary and will ensure that its staff are available to provide assistance when required.

4 Fees and payment

- 4.1 Fees will be charged on the basis set out in the proposal. In the event of a time and materials contract they will be charged on the basis of a 7-hour day for weekdays excluding uk public holidays.
- 4.2 The customer shall pay the company, in addition to the fees and any other valid charges, a sum equal to the value added tax chargeable on the value of goods supplied and services performed under the contract at the date of invoice.

- 4.3 All charges are exclusive of expenses unless otherwise stated in the proposal. The customer agrees to pay travel, accommodation, subsistence and other reasonable expenses incurred in providing the service including travel to and from the customer's site. Mileage will be charged at the rate of £0.45 per mile. Air travel is economy class.
- 4.4 Invoices will be issued in accordance with the payment schedule set out in the proposal. Invoices will be paid within 30 days of the invoice date.
- 4.5 The estimate of the total vat exclusive cost of the services stated in the proposal is based upon the information provided by the customer during contract negotiations. The company will use all reasonable endeavours to ensure that the services are provided within the estimate given. If, however, the customer fails to notify the company in writing prior to the commencement of the contract of any relevant circumstances that could or will increase costs or should any reasonably unforeseen circumstances arise that will or could increase costs the company shall notify the customer as soon as it becomes aware of such circumstances and will issue a revised estimate. The company will proceed with the services upon the basis of the new estimate unless notified in writing by the customer within 7 days of issue of the revised estimate that the customer does not wish to proceed. In such circumstances the contract shall be deemed terminated and the customer shall pay for any work done up to and including the date of termination.

5 Intellectual property rights

- 5.1 The customer shall not acquire any right, title or interest in or to the intellectual property rights ("ipr") of the company or its licensors including the company's software, know-how, the results or the solution which forms part of the services.
- 5.2 The company shall not acquire any right, title or interest in or to the intellectual property rights ("ipr") of the customer or its licensors including the customer's software, data and database.
- 5.3 The company hereby grants to the customer a royalty free, non-exclusive perpetual licence to use the results and the solution for any purpose relating to the services or to the exercise of the customer's business.
- 5.4 Nothing herein shall be so construed as to prevent either party from using data processing techniques, ideas, know-how and the like gained during the performance of the contract in the furtherance of its normal business, to the extent that this does not result in a disclosure of confidential information,

infringement of any valid intellectual property rights of either party or the unauthorised processing of any personal data.

6 Term and termination

- 6.1 This contract shall commence on the date it is executed and shall continue until the services and any deliverables have been provided.
- 6.2 Either party may at any time terminate the contract by notice in writing to other if the other party shall become bankrupt or insolvent or shall have a receiver, manager or administrative receiver appointed or shall make any arrangement or composition with its creditors or fail to satisfy a statutory demand or have any distress levied against it.
- 6.3 Either party may at any time terminate the contract with immediate effect by notice in writing to the other should the other party commit a material breach which is not remedied within a reasonable period (not to exceed 30 days) of a written request to do so specifying termination as a consequence of such failure.
- 6.4 The customer may terminate this contract by giving not less than 30 days' written notice to the company and upon payment for all services provided up to and including the date of termination together with the reasonable costs and fees of the company incurred as a result of the early termination of this contract. The company will take reasonable steps to mitigate any such costs and fees. Where the proposal sets out a fixed fee for the services the customer will be charged on a time and material basis for the work carried out by the company in the provision of the services up to the date of termination.
- 6.5 The terms of the contract which expressly or by implication are intended to survive its expiry shall do so. Those terms which are expressly stated to survive are clauses 5, 6, 7, 8, and 9.

7 Liability

- 7.1 Neither party excludes or limits its liability to the other party for death or personal injury or for fraudulent misrepresentation.
- 7.2 Subject to clause 7.1 the company's liability under the contract in respect of loss or damage suffered by the customer in connection with the provision of the services shall be limited to the sums payable in respect of the services under the contract, or if greater, the sums recoverable under our insurances.

7.3 Without prejudice to the generality of clause 7.2 the company shall not be liable to the customer for loss of profits, or of business, or of revenue and/or indirect or consequential loss or damage and/or specific performance.

7.4 The services, results and deliverables are provided solely for the benefit of the customer and the company accepts no responsibility for third party use of the services, results or deliverables.

8 Confidentiality

In this clause 8 the party receiving confidential information shall be referred to as “the recipient” and the party who discloses the information as “the discloser”.

8.1 Subject to clause 8.2 the recipient shall and procure that its staff, agents and contractors shall treat as confidential any and all information that it or they obtain from the discloser as a result of or in connection with the services or the contract which is, by its nature, confidential or is marked as such and includes any information derived from such confidential information.

8.2 Clause 8.1 does not apply to any information which the recipient proves:

8.2.1 Is in or enters the public domain other than by breach of clause 8.1;

8.2.2 Is obtained from a third party who is lawfully authorised to disclose such information free of any obligation to keep it confidential;

8.2.3 Was known to the recipient (without obligation to keep it confidential) at the date of disclosure;

8.2.4 Has been independently ascertained or created by the recipient without access to any or all of the relevant confidential information of the other to which clause 8.1 refers; or

8.2.5 Is required to be disclosed by (i) law or by order of a court of competent jurisdiction or (ii) pursuant to a formal or informal request of a tax authority or (iii) to its legal advisers for the purpose of obtaining legal advice.

9 Data protection

9.1 In this contract, the terms personal data, data subject, data controller and data processor have the meanings given in the data protection act 1998.

9.2 With respect to the parties' rights and obligations under this contract, the parties agree that the customer is the data controller and that company is the data processor.

- 9.3 In so far as the company processes any personal data on behalf of the customer, the company shall:
- 9.3.1 Process the personal data only on behalf of the customer only for the purposes of performing this contract and only in accordance with instructions contained in this contract or received from the customer from time to time;
 - 9.3.2 Not otherwise modify, amend or alter the contents of the personal data or disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised in writing by the customer;
 - 9.3.3 At all times comply with the provisions of the seventh data protection principle set out in schedule 1 of the data protection act 1998;
 - 9.3.4 Take reasonable steps to ensure the reliability of any of the companies personnel who have access to the personal data;
 - 9.3.5 Obtain prior written consent from the customer before transferring the personal data to any sub-contractors in connection with the provision of the services;
 - 9.3.6 Ensure that only those of the companies personnel who need to have access to the personal data are granted access to such data and only for the purposes of the performance of this contract;
 - 9.3.7 Not publish, disclose or divulge any of the personal data to any third party (including for the avoidance of doubt the data subject itself) unless directed to do so in writing by the customer;
 - 9.3.8 Notify the customer (within five business days) if it receives:
 - 9.3.9 A request from a data subject to have access to that person's personal data; or
 - 9.3.10 A complaint or request relating to the customer's obligations under any data protection legislation; or
 - 9.3.11 Any other communication relating directly or indirectly to the processing of any personal data in connection with this contract;
 - 9.3.12 Provide the customer with full co-operation and assistance in relation to any complaint or request made in respect of any personal data;
 - 9.3.13 Not transfer personal data outside the european economic area (eea) without the prior written consent of the customer.

9.4 In case the applicable data protection and ancillary laws change in a way that the contract is no longer adequate for the purpose of governing lawful data sharing exercises, the parties agree that they will negotiate in good faith to review the contract in light of the new legislation.

10 Law and jurisdiction

10.1 This contract is governed by and shall be construed in accordance with English law and any disputes, differences or questions of interpretation shall, subject to the remainder of this clause 10, be subject to the exclusive jurisdiction of the English courts.

11 Changes

11.1 Either party may request changes to the contract which must be described in sufficient detail for the other party to assess the impact of the requested change on cost and timetable. The parties will work together to consider and, if appropriate, agree the changes but until such agreement is confirmed in writing both parties will act in accordance with the existing terms of the contract.

12 General

12.1 Neither party will, during the period of the contract or for twelve months thereafter, solicit or seek to recruit staff of the other party who have been involved in delivering or receiving the services. In the event that either party recruits such an individual during such period it shall as consideration for introduction pay to the other a sum equivalent to (at the option of that other) the last six months' gross earnings of the individual from that other or their projected first six months' gross earnings with the recruiter. This clause will not restrict either party from recruiting any individual who applies unsolicited to a recruitment campaign, in which case no fee will be payable.

12.2 The company may only refer to the customer by name, in advertising material, proposal or other such documents, with prior written consent of the customer.

12.3 Neither party will be liable to the other for any failure to perform any obligation (other than an obligation to pay) caused by circumstances outside its reasonable control.

12.4 Neither party may transfer, charge or otherwise seek to deal in any of its rights under this contract without the prior written consent of the other. Except that the company may transfer the rights and obligations to any legal entity established or authorised to take over that part of the company's business engaged in providing the services.

- 12.5 In the event of any conflict between these terms and any other document that forms part of the contract these terms shall prevail except where they have been amended by specific reference to the relevant paragraph of these terms.
- 12.6 The contract (being these terms and conditions and the proposal) forms the entire agreement relating to the services. It replaces and supersedes any previous proposals, correspondence understandings or communications. The headings and titles are included to make it easier to read but do not form part of the contract. Any amendment of the contract will not be effective unless agreed in writing and signed on behalf of both parties by duly authorised signatories. E-mail communications between the parties shall not have contractual effect, unless expressly stated so to do.
- 12.7 A person who is not a party to the contract shall not derive the right to enforce any of the terms of the contract by virtue of the contracts (rights of third parties) act 1999 (the third party rights act).