

## Terms & Conditions for Spurtle Design/ Design Expert/Analysis Now & JIB Solutions Ltd.

28 Mar 2022

### Definitions

1. "Assignment". Means an identifiable piece of consultancy work to be undertaken by the Consultant (Spurtle Design – SD, Design Expert – DE, Analysis Now – AN or JIB Solutions - JS) under the terms of this agreement.
2. "Confidential Information". Means all business information about the parties to this agreement.  
  
It includes personal data, owned by any data subject whom a party to this agreement may contact in relation to the subject matter of this agreement.
3. "Intellectual Property". Means intellectual property of every sort, and including, among others, patents, trademarks, unregistered marks, designs, copyrights, software, domain names, discoveries, creations, and inventions.

### Entire agreement

1. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
2. Each party acknowledges that, in entering into this agreement, he does not rely on any representation, warranty, information or document or other term not forming part of this agreement.

### Consultant's status

1. The Consultant is not a partner, agent or employee of the Client and does not have authority to enter into any commitment on behalf of the Client.
2. The Consultant agrees that he will be responsible for his own income and other tax liability and national insurance in respect of his fees and he hereby agrees to indemnify the Client in respect of any claim that may be made by any tax authority against the Client in respect of income or other tax or national insurance relating to the Consultant's services under this agreement.

### The contract

1. The Consultant agrees to work on Assignment for the fees set out in this agreement.

2. The Consultant shall commence work on a date to be confirmed.
3. So far as the Client instructs the Consultant to work on another assignment, that work shall be deemed to be a separate assignment, regulated under the terms of this overarching contract. Accordingly, the acceptance or cancellation of one assignment does not affect the work on any other.
4. The Consultant may accept or decline any assignment.
5. The Client agrees to provide accurate, timely and complete data and fully cooperate with the Consultant to enable him to perform his part of this contract.
6. Nothing in this contract shall prevent the Consultant from entering into a similar contract with any other person.

### Consultant's fees and expenses

1. The Consultant may charge for any reasonable costs incurred as a result of any delay caused by the Client or any circumstance controlled by the Client.
2. Payment of the sum specified in the invoice will be made by the Client within 14 days of date of sending the invoice. Failure to make timely payment shall entitle the Consultant to stop all work for the Client, including work regulated by any other agreement.
3. The Consultant shall be entitled after 28 day's notice to the Client to increase the rates for work charged. Such increase shall be no greater than 10 per cent in any year.
4. The Consultant reserves the right to charge the Client interest in respect of the late payment of any money due under this agreement (both before and after judgment) at the rate of 5 per cent above the base rate from time to time of the Bank of England from the due date until receipt of payment.

### Consultant's requirements

1. The Consultant will provide a document setting out practical requirements as required from time to time. The Client agrees to do his utmost to comply with the requirements of that document.

### Confidentiality

1. The parties are aware that from time to time they will each have access to and be entrusted with Confidential Information of the other.
2. The parties hereby undertake for themselves and every employee or

sub-contractor whose services they may use both during and after termination of this contract that they will not divulge to any person whatever or otherwise make use of (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information.

3. Each party to this agreement hereby undertakes to the other to make all relevant employees, agents and sub-contractors aware of the confidentiality of information and the provisions of this paragraph and to take all such steps as shall from time to time be necessary to ensure compliance by those people with these provisions.
4. Each party to this agreement now undertakes to the other that he will comply with the Data Protection Act 2018 regarding protection, disclosure, and processing of Confidential Information.

### Intellectual Property rights

Intellectual Property owned by a third party is not affected by this agreement. During and after completion of any Assignment and unless otherwise specified in this agreement ownership of Intellectual Property shall be as follows:

1. Intellectual Property created by the Consultant prior to the date of this agreement and incorporated in any Assignment belongs to the Consultant.
2. Intellectual Property created during the Assignment exclusively for the Client belongs to the Client once the final invoice has been paid.
3. The Consultant now grants a non-exclusive license to the Client for any Intellectual Property created by the Consultant prior to the date of this agreement and incorporated in any Assignment for use by the Client for a period of 99 years.
4. The Client shall grant the Consultant permission to use the Client's organisation name and branding in promotional material (e.g. website) when listing clients. The Client may withdraw this permission by providing 14 day's notice.

### Limitation of liability

The law differs from one country to another. This section applies so far as the applicable law allows.

1. All implied conditions, warranties and terms are excluded from this agreement. If in any jurisdiction an implied condition, warranty or term cannot be excluded, then this sub paragraph will be deemed to be reduced in effect, only to the extent necessary to release that specific condition, warranty or term.

2. The Consultant shall not be liable to the Client for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of this agreement.
3. The Consultant shall not be liable to the Client for any loss or expense which is:
  - 3.1. indirect or consequential loss; or
  - 3.2. economic loss or other loss of turnover, profits, business or goodwill; or
  - 3.3. loss or damage suffered by the Client as a result of an action brought by a third party.

The above provisions apply even if such loss was reasonably foreseeable or the Consultant had been advised of the possibility of the Client incurring it.

4. Except in the case of death or personal injury, the total liability of the Consultant under this agreement, however it arises, shall not exceed the sum of £1,000. This applies whether the Client's case is based on contract, tort or any other basis in law.
5. This paragraph (and any other paragraph which excludes or restricts the liability of the Consultant) applies to the Consultant's employees, subcontractors and agents (who may enforce this clause under the Contracts (Rights of Third Parties) (Scotland) Act 2017, as well as to Consultant himself.

### Duration and termination

1. This agreement shall continue until terminated by one of the following events:
  - 1.1. completion of the Assignment; or
  - 1.2. either party giving 14 days' notice of termination to the other; or
  - 1.3. by the Consultant at any time without notice if the Client fails to pay any sum due within 28 days of the date of submission of an invoice;
2. Notwithstanding termination of this agreement for whatever reason, all the provisions that are intended to operate or have effect after termination or expiration shall continue in full force and effect.
3. Without regard to the reason why this agreement ends, the Client will pay the Consultant for all work done to the time the notice of termination is received to the Consultant, calculated to the nearest one hour.

### Miscellaneous matters

1. No amendment or variation to this agreement is valid unless in writing, signed by each of the parties or his authorised representative.
2. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms.
3. Any obligation in this agreement intended to continue to have effect after termination or completion shall so continue.
4. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor indicate any intention to reduce that or any other right in the future.
5. The parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
6. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
7. This agreement does not give any right to any third party under the Contracts (Rights of Third Parties) (Scotland) Act 2017 or otherwise, except that any provision in this agreement which excludes or restricts the liability of the directors, officers, employees, subcontractors, agents and affiliated companies of a party, may be enforced under that Act.
8. The validity, construction and performance of this agreement shall be governed by the laws of Scotland and the parties agree that any dispute arising from it shall be litigated only in that country.

### If agreed using hardcopy:

Date:

\_\_\_\_\_

Signed by [personal name]

\_\_\_\_\_

On behalf of [Client name]

\_\_\_\_\_

who personally accepts liability for the proper authorisation by the Client to enter into this agreement.