

## TERMS AND CONDITIONS OF BUSINESS (“CONDITIONS”)

### 1. INTERPRETATION

1.1. In these Conditions, save where the context requires otherwise, the following words and expressions have the following meaning:

Agreement	the agreement between you and us on the terms set out in these Conditions, the Order or any Statement of Work;
Client Materials	all text, images, designs, layouts, graphical user interfaces and other graphical elements, client owned software (including any modifications and/or documentation related to it), code, data, product, invention, discovery, improvement, scripting, document and/or other material created, prepared, made or produced by you, your licensors and/or any of your Personnel (except us) that are provided to us;
Client Data	means any data (including, without limitation, Personal Data and meta data) contributed or made available by or on behalf of Client or any of its Affiliates to Mezzo Lab or its Affiliates, including any modification, adaptation, enhancement or derivation of any such Client Data
Personal Data	means any data relating to an identified or identifiable natural person, or a household: an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person
Confidential Information	any trade secrets, business, commercial or operational information, data, personal data or any other confidential or proprietary information that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be supposed to be confidential including this Agreement and its terms;
Data Protection Law	means (i) all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), and the Data Protection Act 2018 (and regulations made thereunder); (ii) any code regulation or guidance relating to (i). For the avoidance of doubt, where we are processing personal data which has been provided to us by the Client, the laws applicable to the Client shall also apply to us;
Fees	the fees for provision of the Services, as stated in the Order;
Intellectual Property	(i) patents, registered trademarks, registered designs, applications and rights to apply for any of those rights; (ii) unregistered trademarks, service marks, copyrights (including, where applicable, applications and rights to apply for registration of copyright and rights in computer software), topography rights, database rights, moral rights, know-how, rights in designs and inventions; (iii) trade secrets, rights in confidence, business and company names (including any proposed company or trading names of the Client), Internet domain names (including any proposed or registered domain names of the Client that are not yet in operation); the goodwill attaching to any of the aforementioned rights; and (iv) any forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;
Mezzo Materials	all text, images, designs, layouts, graphical user interfaces and other graphical elements, software, (including any modifications and/or documentation related to it), code, data, product, invention, discovery, improvement, scripting, document and/or other material created, prepared, made or produced by us, and/or any of our Personnel, during the term of this Agreement which was not created specifically and exclusively for the Services;
Personnel	directors, officers, employees, agents and sub-contractors;
Pre-existing Property	all text, images, designs, layouts, graphical user interfaces and other graphical elements, software, (including any modifications and/or documentation related to it), code, data, product, invention, discovery, improvement, scripting, document and/or other material created, prepared, made or produced by us in which we own the Intellectual Property prior to the date of this Agreement;
Services	the services described in the Order; and
Statement of Work	the statement of work “SOW” or estimate attached to the Order.

1.2. If there is any inconsistency between the Order and the Conditions, the Order shall prevail.

### 2. CONDITIONS

- 2.1. These Terms and Conditions shall govern the relationship between you and us in respect of the provision of the Order and will replace any and all other prior agreements whether written, oral, express or implied, in relation to the Order.
- 2.2. In consideration of the Fees, we shall provide the Service to you in accordance with these Conditions.
- 2.3. We shall provide the Services with reasonable care and skill and in a diligent, prompt and professional manner by Personnel with the necessary knowledge and skills. If any Services fail to conform to this standard, we shall use reasonable endeavours to re-perform the non-conforming Services at no additional charge.
- 2.4. We shall use reasonable endeavours to meet any performance targets specified in the Order and/or the Statement of Work. However, we do not warrant that any result or objective can be or will be achieved or attained at all or by a given date, whether stated in the Order, the Statement of Work or elsewhere.
- 2.5. The Order may only be varied, or added to, from time to time, by a document in writing and signed by both parties. The changes shall be clearly identified, together with the additional or different level of Fees to be paid.
- 2.6. Nothing in the Agreement shall prevent either party from engaging in similar agreements with third parties before, during, or after the term of the Agreement.

### 3. CLIENT'S OBLIGATIONS

- 3.1. You shall without charge:
- 3.1.1. ensure that your Personnel co-operate with us in relation to the provision of the Services;
  - 3.1.2. promptly furnish to us such information, approved application log-ins, material, data and documents as we may reasonably request for the proper performance of our obligations under the Agreement;
  - 3.1.3. promptly inform us of any health and safety policies with which our Personnel must comply whilst on your premises; and
  - 3.1.4. procure copyright and other appropriate licences or consents where necessary for the provision to you or use by us of any information, material, data and/or documents provided to us by you (or on your behalf) in connection with our provision of the Services.

### 4. FEES AND PAYMENT

- 4.1. You shall pay to us the Fees in accordance with the terms set out in the Order or Statement of Work.
- 4.2. The Fees are exclusive of any VAT which shall be paid by you in addition to and at the same time as the Fees.
- 4.3. The Fees do not include travel, hotel or subsistence expenses or the cost of materials and external services incurred in performing the Services. You shall reimburse us any such costs and expenses as have been approved by you at cost.
- 4.4. You shall pay our Fees in full without any deduction whatsoever.
- 4.5. Payment is due within 30 days of the date of our invoice. If an invoice is overdue for payment by more than 30 days, we may (without prejudice to any other right or remedy):
- 4.5.1. charge interest on the outstanding amount at the rate of 4 per cent per annum above the base lending rate of Royal Bank of Scotland plc, accruing daily;
  - 4.5.2. require you to make a payment in advance for any Services not yet supplied; and/or
  - 4.5.3. suspend provision of the Services.

### 5. CONFIDENTIALITY

- 5.1. Each party ("**Receiving Party**") shall keep the Confidential Information of the other party ("**Disclosing Party**") confidential and secret, whether disclosed to or received by the Receiving Party. The Receiving Party shall only use the Confidential Information of the Disclosing Party for the purpose of performing the Receiving Party's obligations under the Agreement. The Receiving Party shall inform its Personnel of the Receiving Party's obligations under the provisions of this clause and ensure that the Receiving Party's Personnel meet the obligations including by ensuring that they enter into confidentiality obligations with you of at least equal strength to those which you are agreeing to in this Agreement.
- 5.2. The obligations of clause 5.1 shall not apply to any information which:
- 5.2.1. was known to or in the possession of the Receiving Party before it was provided to the Receiving Party by the Disclosing Party;
  - 5.2.2. is, or becomes, publicly available through no fault of the Receiving Party; and/or
  - 5.2.3. is required to be disclosed by a court order of competent jurisdiction or as may otherwise be required by law.

### 6. PERSONAL DATA

- 6.1. To the extent that the nature of the Services requires us to process Personal Data on your or your clients' behalf, you acknowledge and agree that, for the purposes of Data Protection Law, we act as a processor and shall:
- 6.1.1. comply with, and only act upon, your instructions regarding the processing of that Personal Data;
  - 6.1.2. not process that Personal Data for any purposes other than to provide the Services;
  - 6.1.3. ensure that appropriate technical and organisational measures are taken to avoid unauthorised or unlawful processing of that Personal Data and against loss or destruction of, or damage to, that Personal Data;
  - 6.1.4. ensure the reliability of all Personnel who have, and shall have, access to that Personal Data;
  - 6.1.5. not, by any act or omission, place you in breach of Data Protection Law;
  - 6.1.6. inform you immediately of any suspected or confirmed data protection breaches or unauthorised or unlawful processing, loss, or destruction of, or damage to, that Personal Data;
  - 6.1.7. not sub-contract to any third party any of our obligations to process that Personal Data on your or your clients' behalf without your prior written consent; and
  - 6.1.8. not process, or cause to be processed, that Personal Data outside the European Economic Area unless we have: (i) your prior written consent to do so; and (ii) fulfilled all of our requirements to enable the processing to take place outside the European Economic Area.
- 6.2. Mezzo Labs certifies that it shall not retain or use any Client Data for any purpose other than provision of the Services and shall not disclose Client Data to any third party. We shall not exploit, use, or disclose any Client Data for a commercial purpose outside of the direct business relationship with Client

### 7. INTELLECTUAL PROPERTY

- 7.1. You (or your licensors) shall retain all Intellectual Property Rights in the Client Materials. You grant us a personal, non-exclusive, royalty-free, worldwide licence for the term of this Agreement to use, reproduce, modify and adapt the Client Materials (or portions of them) solely for the purpose of providing the Services under this Agreement.
- 7.2. We shall own all Intellectual Property Rights in the Mezzo Materials and/or Pre-existing Property. To the extent that you are, or any of your Personnel are, deemed to own any rights in the Mezzo Materials and/or Pre-existing Property, you hereby assign, or shall procure that applicable Personnel assign, to us all Intellectual Property Rights in the Mezzo Materials and/or Pre-existing Property. You shall, or shall

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procure that the applicable Personnel, waive any and all moral rights in the Mezzo Materials and/or Pre-existing Property to the extent permitted under applicable law. If requested by us, you shall, or shall procure that applicable Personnel, sign all documents and do all other acts necessary to give effect to this clause.

- 7.3. If we incorporate any Pre-existing Property and/or Mezzo Materials into the Services, we grant you a personal, non-exclusive, royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce, modify and adapt the Mezzo Materials and/or Pre-existing Property (or portions of them) solely to the extent necessary for you to make use of the Services and (after the Agreement has terminated) on the condition that you have paid for the Services in full.
- 7.4. All Client Materials, Pre-existing Materials and Mezzo Materials shall be deemed Confidential Information, except for any open source software.

**8. INDEMNITY**

- 8.1. Each party shall indemnify the other against any losses, liability, damages and expenses (including all reasonably incurred legal fees) that the indemnified party incurs or are awarded against it as a result of any claim against the indemnified party that its use or provision of the Services (a) infringes a third party's Intellectual Property, or (b) is in breach of Data Protection Law, provided that:
- 8.1.1. the indemnifying party is given prompt notice of such claim;
- 8.1.2. the indemnifying party is given sole authority to defend or settle the claim; and
- 8.1.3. the indemnified party provides reasonable co-operation to the indemnifying party in the defence and settlement of such claim, at the indemnifying party's expense
- 8.2. We may upon mutual agreement include the Client's name in its work portfolio or website display. In any event, the Client will be given reasonable opportunity to review and approve all information pertaining to its company prior to the public exposure.

**9. RESTRICTIONS**

- 9.1. You shall not during this Agreement or within a period of 6 months after termination of the Agreement directly or indirectly entice away or try to entice away any person who has during the previous 12 months been employed or engaged by us and who was at any time involved in the provision of the Services to you, whether or not the person would commit a breach of his or her contract of employment or engagement by being enticed by or accepting employment or engagement with you.
- 9.2. We shall not during this Agreement or within a period of 6 months after termination of the Agreement directly or indirectly entice away or try to entice away any person who has during the previous 12 months been employed or engaged by you and who we had contact with at any time in connection with the provision of the Services to you, whether or not the person would commit a breach of his or her contract of employment or engagement by being enticed by or accepting employment or engagement with us.

**10. LIMITATION OF LIABILITY**

- 10.1. Nothing in these Conditions shall exclude or limit either party's liability for:
- 10.1.1. death or personal injury resulting from the negligence of the other or their Personnel
- 10.1.2. fraud or fraudulent misrepresentation; or
- 10.1.3. breach of any implied condition as to title or quiet enjoyment.
- 10.2. Subject to clause 10.1, neither party shall be liable in contract, tort (including, without limitation, negligence), pre-contract or other representations (other than fraudulent misrepresentation) or otherwise arising out of or in connection with this Agreement for:
- 10.2.1. any economic losses (including without limitation, loss of revenues, profits, contracts, data, business, anticipated savings or cost of substitute services);
- 10.2.2. any loss of goodwill or reputation; or
- 10.2.3. any special, indirect or consequential losses,
- 10.3. in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, suffered or incurred by either party arising out of or in connection with the provisions of, or any matter under, this Agreement.
- 10.4. Subject to clauses 10.1 and 10.2, each party's total liability in relation to all events or series of connected events occurring under this Agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to 125% of the Fees paid by you to us in the lesser of (i) the contract term of this Agreement or (ii) the twelve month period immediately prior to the first event allegedly giving rise to the liability.
- 10.5. You acknowledge that, in entering into the Agreement, you do not do so in reliance on any representation, warranty or other provision except as expressly provided in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.
- 10.6. You acknowledge that the Fees have been calculated with reference to the limitations and exclusions of liability set out in this clause.

**11. TERMINATION**

- 11.1. The Agreement shall commence on the date of Order acceptance and these Terms and Conditions shall be binding and (subject to clauses 11.2 and 11.3) shall continue:
- 11.1.1. for the contract term stated in the Order; or
- 11.1.2. until terminated by either party giving written notice to the other, such notice being of not less than the period stated in the Order.
- 11.2. We may (without prejudice to any other right or remedy) terminate this Agreement by notice in writing to you if you fail to pay any sum due to us in the time period set out in clause 4.5.
- 11.3. Either party may (without prejudice to any other right or remedy) terminate this Agreement by notice in writing to the other having immediate effect if:

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- 11.3.1. the other party is in material breach of its obligations under these Conditions, and where a breach is capable of remedy, the breach is not remedied with 30 days by the other party receiving a notice which specifies the breach and requiring the breach to be remedied; or
  - 11.3.2. the other party becomes insolvent or if an order is made or a resolution is passed for the winding up of the other party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets or business, or if the other party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- 11.4. On termination of any order you shall pay us for all Services provided up to the date of termination;
- 11.5. The rights and obligations of Clauses 4 (Fees), 5 (Confidentiality), 6 (Intellectual Property), 8 (Indemnity), 9 (Restriction), 10 (Limitation of Liability) and 11 (Termination)) of this Agreement and of any other clauses which under their terms or by implication ought to survive, shall survive the expiration or termination of this Agreement.

**12. DISPUTE RESOLUTION**

- 12.1. We agree that if any controversy or claim arises in relation to the Agreement, our respective representatives shall negotiate promptly and in good faith in an attempt to resolve the matter between themselves.
- 12.2. If we are unable to resolve any controversy or claim pursuant to clause 12.1 the matter shall be referred to mediation in accordance with the procedures laid down from time to time by the Centre for Dispute Resolution ("CEDR") within thirty (30) days of one of us giving notice to the other that, in its reasonable opinion, no agreement will be reached.
- 12.3. Clauses 12.1 and 12.2 shall not apply to the extent that the right to issue proceedings would be prejudiced by a delay.
- 12.4. If having followed the processes set out in clauses 12.1 and 12.2, we have failed to resolve the controversy or settle the claim, then the matter shall be determined in accordance with clause 13.11.

**13. GENERAL**

- 13.1. Neither party shall assign (in whole or in part) or otherwise transfer the Agreement or any of its rights and obligations under the Agreement without the prior written consent of the other, (such consent not to be unreasonably withheld), except that we may assign (in whole or in part) or otherwise transfer the Agreement or any of our rights and obligations under the Agreement without your consent to a purchaser of all or a substantial part of our assets.
- 13.2. These Terms and Conditions are the full agreement between you and us for the provision of the Services. These terms are the only ones that will apply and they replace any previous agreement for the provision of the Services. The person placing the order will be deemed to be properly authorised by you.
- 13.3. We may use sub-contractors to provide part or all of the Services after receiving your written consent for such assignment. We shall be responsible for the work of a sub-contractor to the same standard as stated in these Conditions.
- 13.4. Any notices sent in accordance with these Conditions shall be sent by email to the contact names and email addresses on the Order. Notice shall be deemed to have been served on the date the email is opened.
- 13.5. Your rights and our rights under these Conditions will not be affected if either of us do not enforce, or delay enforcing, any of these terms.
- 13.6. We are not liable for delaying, or not carrying out any of our duties if caused by circumstances beyond our control. Under these circumstances we can choose to suspend or terminate part or all of the Order or delay carrying out any duty under these Conditions.
- 13.7. You and we are independent contractors under these Conditions who cannot act on behalf of the other. Nothing in this Terms of service shall create an agency, partnership or joint venture of any kind between the parties.
- 13.8. For the purposes of the Contracts (Rights of Third Parties) Act 1999, these conditions are not intended to, and do not, give any person who is not a party to it any right to enforce any of its provisions.
- 13.9. If a court of law decides that a term of these Conditions is illegal or not binding, it shall be deemed deleted and such deletion will not affect the other terms of the Conditions. If any such term of these conditions is deemed deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision .
- 13.10. These conditions are the whole agreement setting out the terms agreed between the parties in relation to its subject matter. Any representation or term on which you seek to rely shall be of no effect unless incorporated into an Agreement or written amendment. No variation of the Conditions shall be of any effect unless made in writing and signed by both parties.
- 13.11. These Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

By placing an order, or accepting an estimate from mezzo Labs you acknowledge and agree to the standard Terms and Conditions of Business as defined above.