

TERMS AND CONDITIONS FOR SUPPLY OF MEMBERSHIP SERVICES

YOUR ATTENTION IS SPECIFICALLY BROUGHT TO THE LIMITATIONS OF LIABILITY SET OUT IN CLAUSE 10.

1. Definition

1.1 The following definitions and rules of interpretation apply in these terms and conditions:

Applicable Data Protection Laws means to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data and/or to the extent the EU GDPR applies, the law of the law of the European Union or any Customer state of the European Union to which Retrained is subject, which relates to the protection of personal data;

Authorised Users means those employees of the Customer authorised by the Customer to access the Membership Services;

Business Day means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Contract means the contract between Retrained and the Customer for the supply of the Membership Services which is comprised of these terms and conditions;

Customer means the person, company or organisation who wishes to obtain the Membership Services;

Deliverables means any documents, products and materials provided by Retrained to the Customer in relation to the Membership Services;

EU GDPR means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law;

Intellectual Property Rights means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Membership Fee means the fee payable for the Membership Services which shall be notified to the Customer prior to entering into the Contract;

Membership Services means the provision of content and Deliverables including video training, written, downloadable materials and access to live group coaching sessions (known as 'Q&A Sessions');

Retrained means Archer Wilkinson Ltd incorporated and registered in England and Wales with company number 11276833 whose registered office is at 7 St. Petersgate, Stockport, SK1 1EB trading as Retrained Search;

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

VAT means value added tax or any equivalent tax chargeable in the UK.

1.2 Unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision is a reference to it as it is in force as at the date of the Contract and a reference to legislation or a legislative provision shall include all subordinate legislation made as at the date of the Contract under that legislation or legislative provision.

1.3 A reference to **writing** or **written** includes email.

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **Commencement and duration of Contract**

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

2.2 Any quotation given by Retrained shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.

2.3 The Customer's request for the Membership Services shall only be deemed to be accepted on the date Retrained receives payment of the Membership Fee from the Customer at which point and on which date the Contract shall come into existence.

2.4 Following receipt of the Membership Fee from the Customer, Retrained shall issue access to the Membership Services to the Customer.

2.5 The Contract shall, unless terminated earlier in accordance with clause 12 (Termination) or otherwise by operation of law, continue until either party gives no less than 30 days' written notice to the other party to terminate the Contract.

3. **Supplier's Responsibilities**

3.1 Retrained shall use reasonable endeavours to supply the Membership Services and shall provide access to the Membership Services to the Customer through electronic transmission via the internet or other forms of delivery as agreed between the parties in accordance with the Contract in all material respects. The Membership Services shall be considered delivered when the materials are accessible by the Customer.

3.2 Electronic access to Retrained's portal for the purposes of downloading Deliverables shall be made available to the Customer for the first six months of the Contract only.

3.3 Retrained shall use reasonable endeavours to meet any performance dates agreed with the Customer but any such dates shall be estimates only and time for performance by Retrained shall not be of the essence of the Contract.

3.4 Retrained reserves the right to amend the Membership Services at any time if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Membership Services and shall notify the Customer in any such event.

3.5 The Customer acknowledges that from time to time the Membership Services may be added to, modified, or deleted from by Retrained and/or that some Deliverables may migrate to other formats. Retrained shall give reasonable notice of any such changes to the Customer.

3.6 Retrained reserves the right to withdraw from the Membership Services the whole or any part of any content or Deliverables at its discretion including for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes the Intellectual Property Rights of any third party or is defamatory, obscene, unlawful or otherwise objectionable.

3.7 Retrained shall provide the Membership Services using reasonable care and skill.

4. **Customer's Obligations**

4.1 The Customer shall:

4.1.1 co-operate with Retrained in all matters relating to the Membership Services; and

4.1.2 comply with its obligations as set out in these terms and conditions.

4.2 If Retrained's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, Retrained shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer and shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Retrained's failure or delay to perform any of its obligations as set out in this clause 4.2.

4.3 The Customer shall not sell, resell, sub-license, lease, rent or hire, lend, transfer, copy, retain or redistribute any rights obtained pursuant to the Contract.

4.4 Except as specifically provided elsewhere in the Contract, the Customer shall not knowingly permit anyone other than itself and its Authorised Users to use or access the Membership Services and shall use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of the Contract including, in particular, the restrictions on access and use of the Membership Services set out in this clause 4 and clause 9.

4.5 The Customer shall not remove, obscure or modify any copyright or other notices included in the Deliverables.

4.6 Other than as specifically permitted in the Contract, the Customer shall not use the Membership Services for commercial purposes, including the sale of the Membership Services and/or Deliverables or bulk reproduction or distribution of the Membership Services and/or Deliverables in any form.

4.7 The Customer shall ensure that the Membership Services and Deliverables are kept secure and shall use all reasonable endeavours to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Membership Services and/or Deliverables.

4.8 If the Customer becomes aware of any material misuse of any Membership Services by the Customer, or any security breach by the Customer in connection with the Contract that could materially compromise the security or integrity of the Membership Services or otherwise adversely affect Retrained, the Customer shall, at its own expense, promptly notify Retrained and fully co-operate with Retrained to remedy the issue as soon as reasonably practicable. Retrained may suspend the Customer's rights under the Contract until the misuse or security breach is remedied.

4.9 In the event of any unauthorised use of the Membership Services by an Authorised User, Retrained may upon providing notice to the Customer, terminate the Customer's and/or such Authorised User's access to the Membership Services or require that the Customer terminate such Authorised User's access to the Membership Services.

5. **Non-solicitation**

5.1 The Customer shall not, without the prior written consent of Retrained, at any during the term of the Contract or for a period of six months after termination or expiry of the Contract, solicit or entice away from Retrained or employ or attempt to employ any person who is, or has been,

engaged as an employee or consultant of Retrained in the provision of the Membership Services.

5.2 Any consent given by Retrained in accordance with clause 5.1 shall be subject to the Customer paying to Retrained a sum equivalent to 50% of the then current annual remuneration of Retrained's employee or consultant or, if higher, 50% of the annual remuneration to be paid by the Customer to that employee or consultant.

5.3 The parties agree and acknowledge that the provisions of clause 5.1 and 5.2 are a genuine attempt to protect Retrained's legitimate business interests reflecting the limited number and particular skillsets of its employees and consultants

6. **Charges and Payment**

6.1 In consideration of the provision of the Membership Services by Retrained, the Customer shall pay to Retrained the Membership Fee together with any VAT chargeable on the Membership Fee.

6.2 The Membership Fee is non-refundable.

7. **Intellectual Property Rights**

7.1 All Intellectual Property Rights in or arising out of or in connection with the Membership Services) shall be owned by Retrained.

7.2 Retrained grants to the Customer or shall procure the direct grant to the Customer of, a fully paid-up, non-exclusive, non-transferable licence for the duration of the Contract to use and modify the Deliverables for the purpose of receiving and using the Membership Services and the Deliverables in its business.

7.3 The Customer shall not sub-license, assign or otherwise transfer, whether in whole or in part, any of the rights granted in clause 7.2.

7.4 For the avoidance of doubt, the Customer shall not copy, re-sell, distribute, share or in any other way transfer the Deliverables or any other materials provided by Retrained as part of the Membership Services to any third party.

7.5 Retrained warrants that the receipt and use of the Deliverables by the Customer solely as permitted by these terms and conditions shall not infringe the Intellectual Property Rights of any third party.

7.6 Retrained shall not be in breach of the warranty at clause 7.5, and the Customer shall have no claim against Retrained to the extent an infringement arises from any breach by the Customer of its obligations under the Contract or any modification of the Deliverables, other than by or on behalf of Retrained.

8. **Data Protection**

8.1 Both parties will comply with all applicable requirements of the Applicable Data Protection Laws and Retrained shall only use the Customer's personal data for the purposes set out in its Privacy Policy [\[include link to privacy policy\]](#) .

9. **Confidentiality**

9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 9.2.

9.2 Each party may disclose the other party's confidential information:

- 9.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9; and
- 9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

10. Limitation of Liability

- 10.1 Except for the express warranties stated herein, the Membership Services are provided on an "as is" basis and any and all other warranties, conditions, or representations (whether express, implied, oral or written), relating to the Membership Services or the Deliverables or any part thereof, including, without limitation, any and all implied warranties of quality, performance, merchantability or fitness for a particular purpose are hereby excluded to the maximum extent permitted by law.
- 10.2 The Deliverables made available by Retrained as part of the Membership Services include template documents. These are generic documents provided for reference only and Retrained accepts no liability for the use of, or reliance on, such documents by the Customer. Customer is responsible for amending the documents to suit their own business needs and to ensure their completeness and is responsible for obtaining independent legal advice on its rights, remedies, obligations and legal liabilities under such documents.
- 10.3 Nothing in the Contract shall operate to exclude or limit Retrained's liability for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law.
- 10.4 Subject to clause 10.2, Retrained shall not be liable to the Customer for any indirect, special, incidental, punitive or consequential damages, including but not limited to loss of data, business interruption, or loss of profits, arising out of the use of or the inability to use the Membership Services.
- 10.5 Subject to clause 10.2, Retrained's maximum aggregate liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, shall be limited to the total fees paid by the Customer to Retrained under the Contract.

11. Inadequacy of damages

Without prejudice to any other rights or remedies that Retrained may have, the Customer acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of the Contract by the Customer. Accordingly, Retrained shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Contract.

12. Termination

- 12.1 Without affecting any other right or remedy available to it, Retrained may terminate the Contract with immediate effect, by giving written notice to the Customer, if the Customer (or any of its employees, officers, or representatives) acts in a way which Retrained, in its absolute discretion, deems to be threatening or abusive or brings or makes vexatious complaints or claims, against Retrained (or any of its employees, officers, or representatives).

- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
 - 12.2.2 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 12.2.3 an order is made or a resolution passed for the winding up of the other party, the other party goes into liquidation, an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the other party's assets, the other party makes an assignment for the benefit of or composition with its creditors generally, or if the other party ceases or threatens to cease carrying on all or a substantial part of its business.
- 12.3 On termination of the Contract (howsoever caused):
- 12.3.1 all rights and authorisations granted by Retrained to the Customer under the Contract shall automatically terminate and immediately revert to Retrained except that the Customer shall be permitted to continue to use any Deliverables which are intended to be and have been downloaded and/or modified by the Customer for the purposes of its business (for example, template terms and conditions) provided such continued use is in accordance with the restrictions and permissions set out in the Contract;
 - 12.3.2 online access to the Membership Services by the Customer and its Authorised Users shall be terminated with immediate effect.
- 12.4 Termination of the Contract (howsoever caused) shall not affect any provision of the Contract which is expressly, or by implication, intended to come into effect on, or to continue in effect after, such termination or expiry nor affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
13. **General**
- 13.1 **Assignment.** The Customer shall not assign, transfer, mortgage, sub-contract, directly or indirectly, all or part of its rights or obligations under the Contract.
- 13.2 **Force Majeure.** Neither party shall be liable in damages or be in breach of the Contract for any delay or default in performing its obligations under the Contract (other than payment obligations) if such delay or default is caused by events or circumstances beyond its reasonable control including, acts of God, Government actions, wars, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, pandemic or epidemic. If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Contract by giving written notice to the affected party.
- 13.3 **Third party rights.** A party who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 13.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

- 13.5 **Entire Agreement.** The Contract constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements between them relating to its subject matter.
- 13.6 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 13.7 **Variation.** Subject to clause 3.4, no variation of the Contract shall be effective unless it is in writing and signed by each of the parties.
- 13.8 **Rights and Remedies.** The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.9 **Severability.** If any provision or part of any provision of the Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable, that provision or part-provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.10 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.11 **Notices.** All notices given pursuant to the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at the party's registered office address or principal place of business or the email address provided for the purposes of the Contract.
- 13.12 Any notice shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and if sent by email, at the time of transmission, or, if this time falls outside of 9.00am to 5.00pm on a Business Day in the place of receipt, at 9.00am on the next Business Day in the place of receipt, provided no error message is received.
- 13.13 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.
- 13.14 **Governing Law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
- 13.15 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.