

# Terms and Conditions

V3.7



Welcome to Fifth Square, the home of high quality Data Protection and Security Compliance, Auditing and Consultancy Services.

You will find our standard Terms and Conditions below. We have tried to make them as clear as possible but should you have any queries or concerns please don't hesitate to raise them with us. We look forward to working with you.

Please read these terms and conditions before using our Services.

Should you have any queries or wish to discuss a bespoke program please don't hesitate to contact us. We look forward to working with you.

© Fifth Square Ltd. See notice below



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# 1. Definitions

Except to the extent expressly provided otherwise, in these Terms and Conditions:

**"Associated Company"** shall mean any company where the Directors have control of or a financial interest in another trading entity or where control of the Company is passed to another due to acquisition.

**"Client" "You"** means the person or entity identified as such in the Service Agreement

**"Contract"** shall mean the agreement of Deliverables between Fifth Square Ltd and the Client until termination of the Contract comprised of the Entire Agreement.

**"Confidential Information"** means all non-public technical information and business information, programming, software code, trade secrets, strategies, methodologies, software, documentation, customer data, financial information and any other information which in the circumstances of its disclosure could reasonably be viewed as confidential.

**"Charges"** means the following amounts:

- a) The amounts outlined in the Services Agreement such amounts as may be agreed in writing by the parties from time to time; and
- b) amounts calculated by multiplying the Deliverables standard time-based charging rates calculated on a pro-rata basis of the Hourly Rate specified within the Services Agreement by the time spent by Fifth Square's personnel performing the Services allocated within 10-minute segments.

**"Contract Renewal"** means an automatic renewal of your contract for a further 12 months after the initial Minimum Term and each subsequent 12-month renewal thereafter.

**"Data Protection Legislation"** means any applicable law or regulation including but not limited to the Data Protection Act 2018 ("DPA2018") and the General Data Protection Regulation (GDPR) relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**"Data Subject", "Controller", "Processor", "Personal Data", "Personal Data Breach", "Subject access request" "Processing" and "Appropriate technical measures"** shall have the meaning expressed in Pt 2 Ch1 of the Data Protection Act 2018 (DPA2018) and Article 4 of the General Data Protection Regulation (GDPR).





**"Hour" "Hourly"** is defined as 60 Minutes of Services provided and is divided into 10-minute segments.

**"Deliverables"** means documentation, certification, methodologies, training and consultancy services relating but not limited to Data Privacy, Data Compliance and Data Security as Defined in the Contract

**"Effective Date"** means the date of signing of the Services Agreement or the start of the delivery of Service whichever is later

**"Entire Agreement"** shall mean the documents relied on to form the Contract. These shall include these Terms and Conditions, Services Agreement, Privacy Policy and any other documentation, such as but not limited to a Schedule of Works, Job Descriptions and Briefing Documents, referenced within the Services Agreement.

**"Fifth Square" "We" or "Us"** means Fifth Square Limited, a company incorporated in England and Wales

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or not, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models and rights in designs);

**"Marks"** shall mean certification, association or other indicators of membership or accreditation used by Fifth Square or a Third Party ("Third Party Supplier Marks") in the fulfilment of the Deliverables. For example but not limited to Cyber Essentials and ISO27001 certification.

**"Minimum Term"** means, in respect of the Contract the period specified in the Service Agreement or if not indicated then as set in these Terms and Conditions.

**"Parties"** shall mean Fifth Square Ltd and the Client.

**"Third Party"** shall mean regulators or other legal bodies

**"Third Party Suppliers"** means third party suppliers of Products included in the Deliverables such as Auditing, Certification, Membership or Accreditations.

## 2. Scope

- 2.1 These Terms and Conditions are provided by Fifth Square Limited a company registered in England and Wales under number 08503695 whose registered office is at 35 Pine Walk, Weybourne, Holt, Norfolk, NR25 7HJ.
- 2.2 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of the Contract.
- 2.3 Words imparting the singular number shall include the plural and vice versa.
- 2.4 References to any gender shall include any definable gender.
- 2.5 These Terms and Conditions shall form part of the Entire Agreement.



### 3. Warranties

- 3.1 Information or advice given orally or contained in Fifth Squares publicity material, advertisements and catalogues and in any correspondence between Us and the Client before the start date of the Contract, is given gratuitously and without responsibility on the part of the Company, and shall not form part of this Contract unless specifically agreed in writing and signed by a duly authorised officer of the Company.
- 3.2 The Client accepts that Fifth Square are not Legal Representatives, Solicitors, Lawyers or Barristers or are liable for any loss due to dispute or challenge to documents or contracts created by us.
- 3.3 Whilst Fifth Square will use its best endeavours to ensure that any advice given to the Client is accurate, Fifth Square makes no warranty as to any effect on the Client's business as a result of the Client following such advice except through negligence.

### 4. Term

- 4.1 The Contract shall come into force upon the Effective Date.
- 4.2 The Contract shall continue in force for the Minimum Term which shall be 12 (Twelve) months from commencement of Deliverables unless specified on the Services Agreement and thereafter from time to time until terminated as per clause 10.
- 4.3 Where there may be any conflict regarding your Effective Date, then you agree the actual Effective Date will be the date you first used the Service(s).
- 4.4 Contract Renewal will automatically follow the Minimum Term on the anniversary of the original Effective Date and constitute a Minimum Term as per clause 4.2.

### 5. Status of Fifth Square

- 5.1 Fifth Square is not an employee of the Client, but an independent contractor.
- 5.2 The termination of the Contract will not constitute unfair dismissal; nor will Fifth Square be entitled to any compensation payments, redundancy payments or similar payments upon the termination of the Contract outside of the Termination costs outlined.

### 6. Deliverables

- 6.1 Fifth Square shall provide the Deliverables to the Client in accordance with these Terms and Conditions.
- 6.2 Fifth Square shall provide the Deliverables with reasonable skill and care expected from a leading service provider in the industry.





- 6.3 Fifth Square shall use its best endeavors to ensure that the Deliverables are delivered to the Client in accordance with deadlines set if defined in either;
- (a) The Services Agreement and/or
  - (b) In a Schedule of Works
  - (c) The Terms and Conditions
- 6.4 Time for delivery of Deliverables shall not be of the essence, unless a regulated event covered by a Deliverable imposes constraints on when said events are reported and dealt with (for instance, but not limited to, a data breach). The agreed dates for delivery of the Deliverable are estimates only and a failure by Fifth Square to comply with them shall not be a breach of the Contract.

## 7. Charges

- 7.1 The Client shall make payment as set out in Clause 8 to Fifth Square in accordance with these Terms and Conditions.
- 7.2 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes.
- 7.3 Travel time to and from Client premises or other locations that are mutually agreed constitutes part of the Day.
- 7.4 Fifth Square will charge 35p per mile for travel unless public transport including Trains, Taxi or Buses are taken by mutual agreement with the Client.
- 7.5 Other Expenses including but not limited to agreed software, materials and other incidentals are not included in the Day and will be chargeable by mutual agreement with the Client.

## 8. Payments

- 8.1 Fifth Square shall issue invoices for the Charges to the Client from time to time during the Term of the Contract.
- 8.2 The Client must pay the Charges to Fifth Square within the period of 14 days following the issue of an invoice or before the service starts whichever is sooner unless on Direct Debit.
- 8.3 Direct Debit payments will be invoiced on the first or closest date to the first of the month and collected 28 days or the closest working day following invoice.
- 8.4 The Client must pay the Charges by direct debit or bank transfer using such payment details as are notified by Fifth Square to the Client from time to time.
- 8.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Fifth Square any undisputed sum due under the Contract on the due date:
- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.





- (b) Interest under this clause will accrue from the Due Date at 1% (AER) above the Bank of England's base rate from time to time, but at 4% (AER) for any period when that base rate is at or below 0%; and
  - (c) We may Claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998
  - (d) Fifth Square may suspend part or all of the Deliverables until payment has been made in full.
- 8.6 If We suspend any Deliverables because you breach the Contract, the Contract will still continue, and you must still pay us any charges as specified in the Service Agreement for any Fifth Square performance rendered after the breach unless and until the Contract is terminated.
- 8.7 If the Contract is terminated, other than by Fifth Square or due to Fifth Square breaching the contract, in accordance with this clause 8 during the Minimum Term, We will levy a cancellation charge in relation to each relevant Contract calculated in accordance with the following;
- (a) Each Contract for which a monthly charge is payable - number of months remaining of Minimum Term for the Contract multiplied by the monthly charge; and/or
  - (b) Repayment of any subsidised charges or any other contribution Fifth Square made towards any other costs such as but not limited to front loading of Certification, Accreditation, Licensing or other Third Party Costs notified to the Client.

## 9. Price Alterations during the contract

- 9.1 You authorise Contract price increases of 1% above CPI inflation for the proceeding 12 months as specified in March of each year.
- 9.2 Any price increase will only be applied to clients that have exceeded the initial Minimum Term.
- 9.3 You authorise licensing, rental or subscription price increases that may be increased at any time by Third Party Suppliers with thirty days (30) days notice of intention. These may include but are not limited to Our Phishing as a Service.

## 10. Termination

- 10.1 Either party may terminate the Contract by giving 45 (forty five) days written notice of termination to the other party if:
- (a) the other party commits any material breach of the Contract , and the breach is not remediable;
  - (b) the other party commits a material breach of the Contract, and the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied;





- (c) an encumbrancer takes possession, or where a receiver is appointed, of any of the property or assets of that other Party;
  - (d) the other Party makes any voluntary arrangement with its creditors or, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - (e) the other Party, has a bankruptcy order made against it or goes into liquidation (except for the purposes of amalgamation or re-construction You effectively agree to be bound by or assume the obligations imposed under the Services Agreement);
  - (f) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party;
  - (g) the other Party ceases, or threatens to cease, to carry on business;
  - (h) the other Party provide 45 (forty five) days' notice before the annual anniversary of the Effective Date.
- 10.2 For the purposes of sub-Clause 10.1(b), a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.3 Fifth Square may terminate the Contract immediately by giving written notice to the Client if:
- (a) any amount due to be paid by the Client to Fifth Square under the Contract is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
  - (b) Fifth Square has given to the Client at least 14 days written notice, following the failure to pay, of its intention to terminate the Contract in accordance with this Clause 10.3.
- 10.4 If we give you notice to terminate under this clause 10, you must pay charges in accordance with clause 8.
- 10.5 If the Contract is for Our DPO service You cannot cancel the contract with Us for the performance of our tasks - e.g. if we consider that particular processing is likely to result in a high risk and advise you to carry out a data protection impact assessment but you disagree with this assessment you cannot dismiss us for providing the advice.

## 11. Cancelling the Contract before Effective Date

- 11.1 You may cancel the Contract at any time up to 7 (seven) working days either after you receive or (if earlier) you are deemed to receive these Terms and Conditions, the Service Agreement and other documents comprising the Entire Agreement or, if sooner, up to but not including the date on which we commence our supply of the Deliverables to you, provided that you notify us in writing of such cancellation within such period.





- 11.2 You will be deemed to have received these Terms and Conditions at the time you sign the Services Agreement. Please note that if you have commenced using Deliverables after receiving these Conditions, you will be deemed to have accepted these Conditions and agree that you will also lose your right of cancellation (statutory or otherwise) as set out in this Clause 11.
- 11.3 If the circumstances described in clause 11.1 apply you must pay us for any work we have done or costs we have incurred up to the date of cancellation as outlined by our cancellation charges schedule to include but not limited to an administration charge of £250.

## 12. Changing the Contract

- 12.1 In general if you ask us to make any change to the Deliverables we will ask you to confirm your request in writing or through confirmation of purchase order. No action will be taken by us to carry out the change until we have received your written confirmation. If we agree to a change, the Contract will be changed when we confirm the change to you in writing.
- 12.2 No other change to the Contract except as outlined in clause 8 is permitted except through written mutual agreement between the parties.

## 13. Limitations and exclusions of liability

- 13.1 Fifth Square shall maintain in force during the period of the Contract adequate and appropriate insurance cover with reputable insurers acceptable to the Client in respect.
- 13.2 Fifth Square shall promptly provide to the Client any evidence, documents or materials reasonably requested by the Client in relation to such insurance cover.
- 13.3 The limits and exclusions in this clause 13 reflect the insurance cover We have been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 13.4 Nothing in these Terms and Conditions will;
- (a) limit or exclude any liability for death or personal injury resulting from negligence;
  - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
  - (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law
- 13.5 The limitations and exclusions of liability set out in this Clause 13 and elsewhere in these Terms and Conditions govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.



- 13.6 In no event shall Fifth Square be liable for any incidental, consequential, indirect, special, punitive or exemplary damages, or damages for loss of profits or revenues, business information, production, contracts or other pecuniary loss or loss defined in 13.11, arising under or in connection with the Contract and even if advised of the possibility of such damages.
- 13.7 The foregoing disclaimer of liability shall apply regardless of whether such liability is based on breach of contract, contractual or extra-contractual liability, tort (including without limitation negligence), strict liability, breach of a fundamental term, fundamental breach, or otherwise.
- 13.8 In no event shall Fifth Square's liability under the Contract exceed the amount paid, under the Contract by the Client in the 12-month period immediately preceding the event giving rise to the Claim except that deemed by the Court Order except through court order to the maximum of insured cover held by Fifth Square Ltd
- 13.9 Our Contracts are provided on the basis of Our knowledge and understanding of best industry practice, know-how and guidance and do not imply or warrant that we are aware of all Data Protection Legislation.
- 13.10 You shall indemnify Us against all liabilities, costs, expenses, damages and losses suffered or incurred in connection with or breach of the Contract connected with of Clause 13.11 except through court order to the maximum of insured cover held by Fifth Square Ltd.
- 13.11 The types of wholly excluded loss referenced in Clause 13.6 are as follows:
- (a) Loss of profits.
  - (b) Loss of sales or business.
  - (c) Loss of agreements or contracts.
  - (d) Loss of anticipated savings including interest
  - (e) Loss of use or corruption of software, data or information.
  - (f) Loss of or damage to goodwill, reputation.
  - (g) Indirect or consequential loss.
  - (h) Penalties and Fines
  - (i) Reasonable professional costs and expenses

## 14. Copyright Licence

- 14.1 We own all intellectual property rights (including but not limited to copyright and related rights) in processes, documents, manuals and other materials provided to You by Us in relation to the receipt by you of the Deliverables.
- 14.2 We hereby grant You a non-exclusive, non-transferable, non-sub licensable, limited licence to use such Deliverables as are provided to you in relation to your receipt of the Services, solely for your internal business purposes.
- 14.3 The Client shall not attempt to alter, translate, adapt, resell, duplicate or modify the Services in any manner whatsoever nor shall it disassemble, decompile, pass off or in any way reverse engineer the Services or the Products
- 14.4 The Client acknowledges Fifth Square use of Digital Rights Management software and will not attempt to remove watermarks or other Digital Licence Tracking tools used by Fifth Square.





- 14.5 The Client shall take all reasonable steps as shall be necessary to protect such copyright and any confidential information in such documentation at Fifth Squares expense.
- 14.6 Use and Ownership of Marks. Each Party recognizes Fifth Square ownership and title to their respective trade-marks, service marks, certifications, qualification marks and trade names whether or not registered (collectively, "Marks").
- 14.7 Any consent to use Third Party Supplier Marks will be conditioned upon compliance with the most current guidelines for use of Third Party Supplier Marks provided by the owner of such Supplier Marks or Upon request by Fifth Square.
- 14.8 Any unauthorized modification to Marks is expressly prohibited.

## 15. Confidentiality

15.1 Each Party undertakes that, except as provided within this Clause 15 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Contract and for 3 (three) years after its termination:

- (a) keep confidential all Confidential Information;
- (b) not disclose any Confidential Information to any other person;
- (c) not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions and of the Contract;
- (d) not make any copies of, record in any way or part with possession of any Confidential Information; and
- (e) ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause 15

15.2 Either Party may disclose any Confidential Information to:

- (a) any sub-contractor or supplier of that Party on the basis that Data Protection Legislation is upheld;
- (b) any governmental or other authority or regulatory body; or
- (c) any employee or officer of that Party or of any of the aforementioned persons;
- (d) such extent only as is necessary for the purposes contemplated by the Contract, or as required by law, and in each case subject to that Party first informing the person in question that the Confidential Information is confidential and obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- (e) use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Service Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.





- 15.3 Notwithstanding that Fifth Square will not be handling client information directly, it undertakes to keep confidential any client information which it may access, or which may be under its control and further to ensure that this obligation is met by others if such information is forwarded and this duty will remain without time limit.
- 15.4 The Parties acknowledge and agree that any breach of the terms of this Clause 14 will cause irreparable harm and damage to the aggrieved Party. The Parties further agree that either Party shall be entitled to injunctive relief to prevent breaches of this Clause 14, and to specifically enforce the terms and provisions of this Clause 14, in addition to any other remedy to which such Party may be entitled, at law or in equity.

## 16. Data Protection

- 16.1 The Parties will comply with all applicable requirements of Data Protection Legislation.
- 16.2 The substantive terms of these Conditions including this clause 16 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 16.3 The Parties acknowledge that data subjects have enforceable rights and effective legal remedies with regard to the data processed within the Services Agreement.
- 16.4 The Parties acknowledge that they may be subject to investigative and corrective powers of supervisory authorities if they fail to meet its obligations which may lead to fines, penalties and other actions.
- 16.5 In addition to the terms of this Clause 16, the terms of the Privacy Notice published and updated from time to time of Fifth Square shall also apply.

## 17 . Data Protection as Controller

- 17.1 The Parties acknowledge that for the purposes of Contractual Obligation Fifth Square will be Controller of Personal Data related to the Clients Employees, Agents and others that We may need to contact in order to carry out our duties under this clause.
- 17.2 The Personal Data elements held by Fifth Square for the purposes of this Clause 16 will be:
- (a) Full Name
  - (b) Email Address
  - (c) Telephone Numbers including mobiles that may not belong to Firm
  - (d) Work Address
- 17.3 If additional Personal Data Elements are obtained, We will inform You.
- 17.4 Client accepts that it has read and understood Our Privacy Policy for the Purposes of these Terms and those contained in the Services Agreement.
- 17.5 The Parties acknowledge that except for occasional transfer Fifth Square will not act in the capacity of a Processor as defined by Data Protection Legislation except



in the course of duties in assisting with Subject Access Requests and similar tasks from time to time.

- 17.6 Without prejudice to the generality of this Clause 16, the Client warrants it has all necessary appropriate legal basis including but not limited to consents and notices in place to enable lawful transfer and processing of Personal Data to Fifth Square for the duration and purposes of the Contract.

## 18. Force Majeure

18.1 Force Majeure Event means any circumstance not within a Party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition [or failing to grant a necessary licence or consent];
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- (h) non-performance by Third Parties Suppliers
- (i) Non-performance of subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- (j) interruption or failure of utility service.

18.2 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

18.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

18.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.





18.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 (three) months the party not affected by the Force Majeure Event may terminate the Contract by giving 1 (one) months written notice to the Affected Party.

## 19. Your Obligations

- 19.1 As Data Controller or Processor, you ultimately retain the legal responsibility to comply with Data Protection Legislation.
- 19.2 Part of this responsibility is to provide the correct framework for Us to operate as Your Data Protection Officer ("DPO").
- 19.3 We should have active support by Your senior management team and We should have access to Your senior management team at all times
- 19.4 Adequate support in terms of infrastructure and staff where appropriate. Our service requires for us to be the main contact point in the event of being assigned as Data Protection Officer. This may require a suitable mechanism to communicate with us (e.g. company email address – DPO@ by mutual agreement.
- 19.5 You will need to provide adequate access to your documents and systems as requested to fulfil our obligations.
- 19.6 You will need to allow us the ability to communicate with staff on our role and for staff to have access to us through our Support email or telephone facility.
- 19.7 You will either use our hosting system for record keeping or provide a SharePoint or Google Drive (Gsuite) instance to us.
- 19.8 By entering into a Contract with Fifth Square Ltd you are declaring that We, as Your DPO, have no conflicts of interests in regard to our role.
- 19.9 You acknowledge that advice given regard to compliance should not be understood as legal advice.
- 19.10 We must not be instructed on how to deal with a matter, what result should be achieved, how to investigate a complaint or whether to consult the supervisory authority.
- 19.11 You must not attempt to instruct us to take a certain view of an issue related to data protection law, for example, a particular interpretation of the law.
- 19.12 You cannot issue us instructions regarding our duties as DPO
- 19.13 We are unable to represent you in a court of law but We can be a witness for you
- 19.14 We must be allowed to maintain confidentiality between Us and employees and other data subjects. In other words We cannot/will not pass on details of any employee who approaches Us with concerns or identification of data breaches and other such matters that may occur.
- 19.15 You grant Us permission to approach the ICO or relevant DPA or our associates for additional advice, guidance or to carry out the duties of the DPO.
- 19.16 You acknowledge that Your contract with us is based on deliverables and time related activities and We can only carry out our duties within the time allocated.
- 19.17 If you believe that to fulfil each Parties legal obligations additional time and resource is required outside that allocated within the Service Agreement you shall accept that additional charges will be incurred as set out in the Services Agreement and recognise that this additional work will require scheduling by Us.





- 19.18 On appointment as Data Protection Officer You will publish the agreed details and communicate with relevant parties including the DPA.
- 19.19 You will inform us in a timely and proper manner regarding data protection matters as they arise
- 19.20 You will invite us to participate in meetings of senior management as set in the scope of the agreement.
- 19.21 You will invite us, if assigned as your DPO, to any meeting where significant decisions with data protection implications are taken. If outside the allocated time given these are accepted as chargeable. Typically, this happens when new systems or processes are introduced and DPIAs are required
- 19.22 You will contact us within 8 business hours of a suspected Data Breach
- 19.23 You will contact us within business 16 hours of a Subject Access Request being made
- 19.24 You will give "due weight" to any recommendations given. If you disagree with our advice you will document why you do not wish to follow these recommendations and file a copy with us
- 19.25 You accept that due to the nature of the Data Protection environment related to the GDPR, Data Protection Act 2018 and ongoing guidance by DPA's, WP29, regulatory bodies (e.g. SRA) and outcomes of legal cases related to Data Protection will inevitably lead to changes in advice given. Fifth Square will carry out due diligence to stay up to date with these events but, subject to Fifth Square being negligent in relation to keeping up to date and/or in respect of any advice given to you, Fifth Square cannot be held liable for oversight.

## 20. General Terms

- 20.1 Transferring the Contract – Either Party may assign or transfer (in whole or in part) the Contract to any Associated Company with consent of the other Party.
- 20.2 Any notice given under the Contract must be delivered by hand or sent by email or prepaid post as follows:
  - (a) to us at the address or email address shown on the Service Agreement or on your last invoice, or at any other address or email address we give you;
  - (b) to you at the address you have asked us to send invoices to or to the email address you have given us.
- 20.3 Entire Agreement. The Contract (including these Conditions, the documents referred to in them, the Service Agreement and any conditions relating to specific Deliverables) constitutes the Entire Agreement between you and us for the Deliverables and supersedes any and all other written, recorded and oral communications between you and us in connection with the Deliverables.
- 20.4 Severance. If any of these Conditions or any term or condition of the Contract is deemed invalid, void, or for any reason unenforceable, that term or condition will be deemed severable and will not affect the validity and enforceability of any remaining term or condition.





- 20.5 Reliance. You acknowledge that you have not been induced to enter into the Contract by, nor have you relied upon, any representation, promise, assurance, warranty or undertaking (whether written or oral) by or on behalf of us or any other person save for those set out in the Contract, except in the case of fraud.
- 20.6 No waiver. If you breach these Conditions and we take no action, we will still be entitled to use our rights and remedies in any other situation where you breach these Conditions.
- 20.7 Survival. Any Conditions which are expressed to survive expiry or termination shall survive expiry or termination of the Contract however caused.
- 20.8 Third Party Rights. A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 20.9 Governing Law and Jurisdiction. The Contract shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts. If any provision is determined to be unlawful and/or unenforceable, the other provisions of the Contract will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 20.10 Applicable Conditions. The Contract will continue in respect of each Deliverable for the Minimum Term applicable to each Service and thereafter unless and until terminated in accordance with clause 10.
- 20.11 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of the Contract shall not affect the accrued rights of either party.
- 20.12 Fifth Square shall remain responsible to the Client for the performance of any subcontracted obligations.
- 20.13 The Contract is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Contract are not subject to the consent of any third party.

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## Version Control

<b>Version Number</b>	<b>Date of Change</b>	<b>Change Author</b>	<b>Change</b>
<b>V2.0</b>	25.7.2017	Simon Ghent	
<b>V2.1</b>	26.2.2018	Simon Ghent	
<b>V2.2</b>	11.4.2018	Simon Ghent	
<b>V2.3</b>	15.4.2018	Simon Ghent	
<b>V2.4</b>	16.4.2018	Simon Ghent	
<b>V3.0</b>	5.8.2019	Simon Ghent	
<b>V3.1</b>	3.2.2019	Simon Ghent	
<b>V3.2</b>	7.1.2021	Simon Ghent	
<b>V3.3</b>	11.1.2021	Simon Ghent	
<b>V3.4</b>	13.4.2022	Simon Ghent	
<b>V3.5</b>	11.10.2023	Simon Ghent	
<b>V3.6</b>	13.10.2023	Simon Ghent	Payment terms made clearer, removed termination costs in certain cases.
<b>V3.7</b>	15.11.23	Simon Ghent	Remove reference to Day rates

