

Winskill Editorial Terms and Conditions

These terms and conditions shall apply to any and all agreements between Gale Winskill (the 'Supplier') and any customer to whom she has sent a letter of engagement (each such individual, partnership or company defined herein as a 'Customer') in respect of editorial services which the Supplier has agreed to supply to a Customer and accordingly for each Customer the Letter of Engagement is referred to for its terms and incorporated herein by reference. The Customer's attention is specifically drawn to Clauses 4.5, 5.1.3, 8 & 10.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Deliverables all documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts), or the deliverables specified in the Project Plan.

Document includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material all Documents, information and materials provided by the Customer relating to the Services, including (without limitation) computer programs, data, reports and specifications.

Intellectual Property Rights all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Letter of Engagement means the letter or email issued by the Supplier, Gale Winskill, to any customer of hers with whom she has agreed to provide editorial services, setting out the details of the contract between the Supplier and that Customer.

Pre-existing Materials all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

Project the project described in the Letter of Engagement or in the Project Plan (as the case may be).

Project Plan the detailed plan describing: a) the editorial services required of the Supplier in relation to the Project and setting out; b), the estimated timetable; and c)

the estimated costs of the Services agreed in accordance with clause 3 and set out in the Letter of Engagement.

Services the services to be provided by the Supplier under this agreement as set out in the Project Plan, together with any other services which the Supplier provides or agrees to provide to the Customer.

VAT value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assignees.
- 1.4 The schedules and background form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules and background.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and email.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in this agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to clauses and schedules are to the clauses and schedules of this agreement.

2. Commencement and duration

- 2.1 The Supplier shall provide the editorial services comprised of the Services on the terms and conditions of this agreement.

- 2.2 The Services supplied under this agreement shall continue to be supplied until the Project is completed in accordance with the Project Plan and, after that, may continue to be supplied as and when required unless this agreement is terminated by one of the parties giving to the other not less than two months' notice, unless this agreement is terminated in accordance with clause 12.

3. Project Plan

- 3.1 The Project Plan shall be agreed in the following manner:
- 3.1.1 the Customer shall provide the Supplier either verbally or in writing with a request, setting out the requirements and specifications of the services which it is requesting from the Supplier, including a description of what work is to be done, dates by which it or each stage of the work is requested to be started and finished, Deliverables, In-put Materials and such other information as the Supplier may request to allow the Supplier to prepare a draft Project Plan for provision of the Services;
 - 3.1.2 the Supplier shall, as soon as reasonably practicable, provide the Customer with a draft Project Plan; and
 - 3.1.3 the Supplier and the Customer shall discuss and agree the draft Project Plan and when it has been agreed, the Supplier shall incorporate same either into a Letter of Engagement or into Schedule Part 2 of the Letter of Engagement they shall both sign a copy of it following its issue in duplicate by the Supplier to the Customer.
 - 3.1.4 The Customer accepts that firm estimates can only be given against documents seen in their entirety by the Supplier. Estimates given against material not seen or seen only in part are provisional and are subject to written confirmation by the Supplier on sight of the material in full.
 - 3.1.5 Work will not commence on any Services until written instructions to proceed, in accordance with the Supplier's proposed terms, have been received.
 - 3.1.6 Where the Services comprise long assignments, the Supplier may agree provisional lower and upper fee limits for the fee on sight of the work in full and then, at a mutually agreed point in time during execution of the assignment, the Supplier will negotiate an adjustment, if necessary, of the previously agreed fee limits. Further work on the Services will not commence until the client has confirmed in writing that the adjustment of the fee has been fully accepted. Administration charges are not included in estimates.
 - 3.1.7 Work undertaken at short notice or over weekends or which has to be completed during the night will be charged for at a higher rate.

4. Supplier's obligations

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Project Plan in all material respects.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Project Plan, but any such dates shall be estimates only.
- 4.3 The Supplier undertakes to use her reasonable endeavours as part of the Services to produce clear and accurate work in accordance with the Customer's instructions, which must be given in writing prior to commencement of the work.
- 4.4 While the Supplier shall use her reasonable endeavours to avoid errors in provision of the Services, no responsibility is accepted for any errors, ambiguity or lack of clarity arising either generally or as a consequence of any errors, ambiguity or lack of clarity in any of the In-put Materials.
- 4.5 Despite the best efforts of all parties, the finished material may contain a small number of residual errors. The Supplier will do her best to return error-free Deliverables, but there is no guarantee that the finished work will be completely perfect.

5. Customer's obligations

- 5.1 The Customer shall:
 - 5.1.1 cooperate with the Supplier in all matters relating to the Services;
 - 5.1.2 provide, in a timely manner, such In-put Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects.
 - 5.1.3 Accept responsibility for the veracity, accuracy and originality of the finished work prior to publication, and understand that residual errors may appear in the final version of the Deliverables.
- 5.2 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to

property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, infringement of any third party's Intellectual Property Rights, failure to perform or delay in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not include the Supplier's name in the Customer's work without the Supplier's written permission.

5.5 The Customer shall provide the Supplier with a complimentary copy of her or the Customer's work if so requested by the Supplier.

6. Change control

6.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

6.2.1 the likely time required to implement the change;

6.2.2 any necessary variations to the Supplier's charges arising from the change;

6.2.3 the likely effect of the change on the Project Plan; and

6.2.4 any other impact of the change on this agreement.

6.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to the charges, the Services, the relevant Project Plan and any other relevant terms of this agreement to take account of the change and this agreement has been varied in accordance with clause 13.

6.4 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 7.

7. Charges and payment

7.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Letter of Engagement or the Project Plan, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Clause 7.2 shall apply if the Supplier provides Services on a

time and materials basis and clause 7.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this clause 7 shall apply in either case.

- 7.2 Where Services are provided on a time and materials basis:
- 7.2.1 the charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly fee rates, as amended from time to time by the Supplier giving not less than one month's written notice to the Customer multiplied by the time taken to complete the Services **OR** in accordance with clause 7.5;
 - 7.2.2 all charges quoted to the Customer shall be exclusive of VAT, which, if applicable, the Supplier shall add to its invoices at the appropriate rate.
- 7.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Project Plan as amended from time to time in accordance with clause 7.5. The Customer shall pay the total price to the Supplier (without deduction or set-off), as set out in the Project Plan.
- 7.4 Any fixed price and hourly rate contained in the Project Plan excludes:
- 7.4.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by the Supplier.
- 7.5 The parties agree that the Supplier may review and increase its standard hourly or daily fee rates as set out in the Project Plan, provided that such charges cannot be increased more than once in any 12-month period. The Supplier shall give the Customer written notice of any such increase one month before the proposed date of that increase. If such increase is not acceptable to the Customer, it may, within two weeks of such notice being received or deemed to have been received in accordance with clause 7.2.1, terminate the agreement by giving one month's written notice to the Supplier.
- 7.6 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 14 days of receipt to a bank account nominated in writing by the Supplier.
- 7.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 7.7.1 charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of the Clydesdale Bank

plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand; and

7.7.2 suspend all Services until payment has been made in full.

7.8 All sums payable to the Supplier under this agreement shall become due immediately on its termination, despite any other provision. This clause 7.8 is without prejudice to any right to claim for interest under the law, or any such right under this agreement.

7.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

8. Intellectual property rights

8.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to clause 3 and to payment in full by the Customer in respect of all of the charges for the Services, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Supplier terminates this agreement under clause 12.2 or this agreement is terminated, this licence will automatically terminate.

8.2 As between the Supplier and the Customer, all Intellectual Property Rights and all other rights in the In-put Materials shall be owned by the Customer and in so far as any revisals to or additions to the In-put Materials are concerned, the Supplier assigns by way of assignation of future copyright in said revisals and/or additions provided always that said assignation shall be deemed to be delivered only on the receipt of all payments due by the Customer to the Supplier in respect of the Services.

8.3 The Customer acknowledges that, where the Supplier does not own any of the Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

9. Confidentiality and the Supplier's property

9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents,

consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

- 9.2 The Customer may disclose such information:
- 9.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this agreement; and
 - 9.2.2 as may be required by law, court order or any governmental or regulatory authority.
- 9.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 9.
- 9.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this agreement.

10. Limitation of liability – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 10.1 This clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- 10.1.1 any breach of this agreement;
 - 10.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and
 - 10.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 10.3 Nothing in this agreement limits or excludes the liability of the Supplier:
- 10.3.1 for death or personal injury resulting from negligence; or
 - 10.3.2 for any damage or liability incurred by as a result of fraud or fraudulent misrepresentation by the Supplier; or
 - 10.3.3 for any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

- 10.4 Subject to clause 10.2 and clause 10.3 the Supplier shall not be liable for: loss of profits; loss of business; loss of contract; loss of use; loss of corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid for the Services.

11. Data protection

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

12. Termination

- 12.1 Subject to clause 12.4 and clause 12.5, this agreement shall terminate automatically on the later of: (i) completion of the Services; and (ii) payment of all charges in respect of the Services.

- 12.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than one month's written notice or immediately on giving notice to the other if:

12.2.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or

12.2.2 the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

12.2.3 the other party repeatedly breaches any of the terms of this agreement 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 this agreement; or

12.2.4 the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

- 12.2.5 the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - 12.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party [other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party]; or
 - 12.2.7 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - 12.2.8 a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - 12.2.9 a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - 12.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - 12.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2.4 to clause 12.2.10 (inclusive); or
 - 12.2.12 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 12.3 The parties acknowledge and agree that any breach of clause 12.2 shall constitute a material breach for the purposes of this clause 12.
- 12.4 On termination of this agreement for any reason:
- 12.4.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
 - 12.4.2 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

- 12.5 On termination of this agreement (however arising) the following clauses shall survive and continue in full force and effect: clauses 8, 9, 10, 12 and 19.

13. Variation

Subject to clause 3 and clause 6, no variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

14. Waiver

- 14.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

15. Entire agreement

- 15.1 This agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement. If the Customer has produced any terms and conditions it is agreed that the Customer's terms and conditions shall not apply and that these terms and conditions shall apply as the contract between the Supplier and the Customer.

16. Assignment

- 16.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights or obligations under this agreement.

17. No partnership or agency

Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

18. Dispute resolution

- 18.1 If any dispute arises in connection with this agreement, the Supplier and the Customer shall, within fourteen days of a written request from one party to the other, meet in good faith in an effort to resolve the dispute.

19. Governing law and jurisdiction

- 19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the Scots Law.
- 19.2 The parties irrevocably agree that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.