



elliswhittam

Employment Law / HR / Health & Safety

Service Agreement Terms

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Introduction

This booklet sets out the Terms on which we will provide our Services to you.

It is an important document and should be read and understood by Clients because it will form part of the contract between us, together with the terms of the signed Service Agreement or order form.

Service Agreement Terms

Ellis Whittam Limited ("we", "us", "Company") provide our Services to you ("Client") subject to these conditions ("Terms"), which form part of your Contract with us.

1.1 Definitions and Interpretation

In these Terms the following expressions have the following meanings:

"Additional Services": any services we provide to you as specified in an Additional Services schedule issued by us to you and/or in the Service Agreement.

"Associated Business": any associated business identified in the Service Agreement.

"Contract": the contract between you and us for the supply of the Services comprising these Terms and the Service Agreement.

"Data": means any data or information, in whatever form, including images, still and moving, and sound recordings, including (but not limited to) any Personal Data.

"Data Controller, Data Processor, Data Subject, Personal Data [and Appropriate Technical and Organisational Measures]" all have the meanings given in the Data Protection Legislation.

"Data Protection Legislation" means GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK.

"Data Processing Policy": means the Company's data protection and privacy policy <https://www.elliswhittam.com/data-processing-policy>

"Employees": your employees excluding all directors and partners (including salaried partners) unless indicated in the Service Agreement.

"Fees": the fees for Services stated in the Service Agreement or such other fees as may be agreed between you and us from time to time

"GDPR" means EU General Data Protection Regulation ((EU) 2016/679).

"IPR": all patents, rights to inventions, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database right, 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.

"Service Agreement": the Service Agreement form or other order form, the Service Agreement Terms booklet (including these Terms and any documents referred to herein) and any proposal letter from us in which we set out details of the Services.

"Service Period": the fixed period stated in the Service Agreement and any extension of that period in accordance with these Terms or otherwise agreed with you.

"Services": the services which we supply to you from time to time including (but not limited to) those listed in the Service Agreement but excluding any Additional Services, which will be supplied on our separate Additional Services terms as notified to you.

"Start Date": the date upon which we agree to start providing Services to you.

"Subcontracted Services": any services (or any part thereof) which are provided by a third party supplier on our behalf ("**Sub-contractors**").

"Subcontractor's Software": any third party software owned or licensed by the Sub-contractors and used in the supply of the Subcontracted Services.

1.2 Except where the context otherwise requires references to persons includes bodies corporate, unincorporated associations and partnerships and the masculine gender includes the feminine and neuter and references to the singular include the plural and vice versa.

2 Appointment

2.1 The Contract shall come into existence when we 2.1.1 execute the Service Agreement 2.1.2 issue written acceptance of your order (including by email); or 2.1.3 commence supply of the Services

2.2 The Services will commence on the Start Date and as regards those Services that are to be provided for a fixed period will continue for the Service Period (unless terminated or suspended in accordance with these Terms) and in relation to those Services that are one-off Services or are otherwise not agreed to be provided over a fixed period the Services will be provided in a reasonable time by us unless or until the Contract is terminated or we suspend the Services under these Terms.

2.3 We will carry out the Services with reasonable care and skill.

2.4 You shall provide us and/or our agents, employees or subcontractors with all information and instructions (within any timeframe requested) and such access to your premises, as may reasonably be required in connection with the supply of Services, Subcontracted Services or Additional Services.

3 Sub-contractors

3.1 The following terms apply to Subcontracted Services:

3.1.1 We reserve the right to withdraw any Subcontracted Services: if such service is provided to you without charge; the Sub-contractor is unable or ceases to supply the Subcontracted Services; upon giving you not less than seven days written notice; or, immediately upon termination of the Contract. Any Subcontracted Services shall be suspended if any of the Services are suspended.

3.1.2 Where any Subcontracted Services are withdrawn we are not liable to you in respect of the failure to provide the relevant Subcontracted Services and: (a) any fees not already paid by you in respect of unperformed Subcontractor Services shall no longer be payable; (b) any fees paid by you in respect of unperformed Subcontractor Services will be refunded to you; and (c) there will be no refund of any fees paid for any Subcontracted Services that have been provided. Termination of the Subcontracted Services shall not affect the supply of the Services and the Contract shall remain in force in relation to such Services.

3.1.3 You agree that you will not make any unauthorised copies of any Sub-contractor Software and will only to use it, and the Subcontracted Services, for your own legitimate purposes in the course of your business, in accordance with any training provided, for the intended purposes and in accordance with the Contract.

3.1.4 We will use our reasonable endeavours to procure the supply of any Subcontracted Services for the fixed period for which other Services are provided to you.

3.1.5 You will indemnify us against any losses, claims, costs, liabilities, damages or expenses incurred by or made against us by any Sub-contractor in connection with your breach of this clause 3.

3.1.6 We are not the provider of the Sub-contracted Services or any Sub-contractor Software and shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising from or in connection with: (a) any Sub-contracted Services; (b) any Sub-contractor Software; or (c) the insolvency of any Sub-contractor, for any: (i) loss of profit (ii) loss of business (iii) loss of agreements or contracts (iv) loss of anticipated savings (v) loss of use or corruption of software, data or information (vi) loss or damage to goodwill; and (vii) any indirect or consequential loss.

Fees

4.1 In consideration of our supply of the Services, you shall pay us the Fee plus VAT in accordance with the payment terms set out in the Service Agreement. In relation to any Additional Services agreed to be provided after the date of the Service Agreement the fee agreed in respect of such Services shall be paid within 14 days from the date of our invoice.

4.2 If you fail to make any payment due by the due date or fail to pay any other sum claimed by us (including, but not limited to, sums that have been paid to third parties on your behalf) and fail to remedy the same within 14 days of being required by us to do so then without limiting any other rights or remedies available to us, we shall also be entitled to:

4.3.1 charge you interest before and after judgment on any unpaid part of the sums due to or claimed by us whether under the Contract or otherwise at the rate of 2% per calendar month or part thereof until full payment is received by us; and/or

4.3.2 terminate the provision of the Services or any part thereof.

4.4 Time for payment of all sums due to us shall be of the essence.

4.5 All amounts due from you shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4.6 We shall be entitled to set off against any sum due to or claimed by you any sum due to or claimed by us.

4.7 In the event that you cancel a confirmed appointment with your nominated Health & Safety Consultant on less than 3 working days' notice, we reserve the right to charge you a re-booking fee of £100 for re-scheduling the appointment.

4.8 Where the Services include our Health & Safety services or products you agree that you will:

4.8.1 keep us informed at all times of any significant developments and occurrences within your organisation and its activities;

4.8.2 fully co-operate with us; and

4.8.3 keep appointments and allow us to attend your premises in a timely manner to carry out assessments. Any failure to do so will result in our status as your competent person as required under Regulation 7 of The Management of Health and Safety at Work Regulations 1999 being withdrawn.

5 Termination

- 5.1 Either party may terminate the Contract immediately at any time by giving written notice to the other party if the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so.
- 5.2 Without affecting any other right or remedy available to us, we shall be entitled to terminate the Contract with immediate effect by giving written notice to you without liability if:
- 5.2.1 you repeat or continue after written warning any other breach of the Contract;
- 5.2.2 you are unable to pay your debts as and when they fall due or go into liquidation or have a receiver or an administrator or an administrative receiver or a provisional liquidator appointed over all or any of your assets, are made bankrupt or enter into a voluntary arrangement or other scheme of arrangement or compromise with your creditors, suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a part of your business, or your financial position deteriorates to such an extent that in our opinion your ability to fulfil your obligations under the Contract have been placed in jeopardy.
- 5.2.3 any representation or warranty by you proves to be untrue or inaccurate in any material respect.
- 5.3 Without limiting our other rights or remedies, we may suspend provision of the Services under the Contract or any other contract between you and us if you fail to pay any amount due under the Contract on the due date for payment, you become subject to any of the events listed in clause 6.2.2 or we reasonably believe that you are about to become subject to any of them.

6 Liability

- 6.1 Subject to clause 6.4, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of:
- 6.2 the Fees paid for that part of the Services in respect of which the claim is made.
- 6.2.1 Nothing in the Contract shall limit or exclude our liability for death or personal injury caused by our negligence or for fraud or fraudulent misrepresentation.
- 6.3 Except as expressly set out in the Contract all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.4 This clause 6 shall survive termination of the Contract for any reason.

7 General

- 7.1 You represent, warrant and undertake to us that all information supplied by you to us, the Insurer and/or any Sub-contractor is and will be true and accurate and that you have not relied on any representation or warranty which does not form part of the Contract.
- 7.2 We may at any time subcontract the provision of the Services.
- 7.3 Any notices to be given under the Contract will be in writing and will be delivered personally or by signed attachment to an email addressed to cmt@elliswhittam.com or sent by first class post to the address of the recipient set out in the Service Agreement or to any other address that the recipient may notify to the other party from time to time for the purpose of receiving notices and will be deemed duly served in the case of a notice delivered personally or by email at the time of delivery and in the case of a notice sent by post two business days after the date of dispatch.
- 7.4 We shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of our obligations under the Contract if such delay or failure results from events, circumstances or causes beyond our reasonable control.
- 7.5 The Contract and any dispute arising in relation to it shall be governed by and construed in accordance with English law and any dispute between the parties whether in relation to the Contract or otherwise shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 7.6 We are entitled to assign the benefit of the Contract to any third party. You shall not assign your rights or liabilities under the contract to a third party without our prior consent.
- 7.7 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party is exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 7.8 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it 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 and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 7.9 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 7.10 Any clause which is expressly stated to or which by implication is intended to survive termination of the Contract shall so survive.

8 Data Protection and Data Processing

- 8.1 You acknowledge that for the purposes of the Data Protection Legislation:
- 8.1.1 You are the Data Controller; and
- 8.1.2 We are the Data Processor - in respect of any Personal Data processed under or in connection with the Contract and the Services.
- 8.2 We may authorise third party processors and subcontractors (TPPs) to process Personal Data.
- 8.3 By entering into the Contract you consent to us processing Personal Data in accordance with the Data Processing Policy, in order that we may properly perform our obligations in respect of the Contract.
- 8.4 The Data Processing Policy includes details about:
- 8.4.1 the Data we collect from in order to perform our obligations in respect of the contract;
- 8.4.2 the use we will make of that Data;
- 8.4.3 who we may disclose the Data to;
- 8.4.4 where we will store your Data and, for how long; and
- 8.4.5 your rights in respect of Data.

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 10.2.
- 9.2 Each party may disclose the other party's confidential information: (a) to such of its employees, agents, subcontractors, accountants or lawyers who need to know such information for the purpose of carrying out the party's obligations under the Contract; and (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each party shall ensure that its employees, agents or subcontractors comply with this clause 10. This clause 10 shall survive termination of the Contract.

10 Intellectual Property Rights

- 10.1 All IPR in or arising out of or in connection with the Additional Services shall be owned by us and you are only permitted to use any of our IPR as required for the discharge of your obligations under the Contract.
- 10.2 You acknowledge that, in respect of any third party IPR, your use of any such IPR is conditional on us obtaining a written licence from the relevant licensor on such terms as will entitle us to license such rights to you.