**About Time Enterprises Limited: Feedback Points & Survey Platform Master Services Agreement**

These TERMS OF BUSINESS set out the terms and conditions under which About Time Enterprises Limited will provide the Services.

By entering into an agreement with About Time to provide the Services from time to time (as described in the attached Key Terms document), the Client agrees to these terms and conditions as set out below. Where there is already a supplier/ client relationship between the parties, these terms replace any existing agreement from the date of the Agreement.

**Background**

1. About Time provide Feedback Points and Survey Platform services to a range of NHS Trusts and other organisations.
2. The Client wishes to procure certain Services from time to time as described on the Key Terms document on these terms and About Time agrees to provide those Services on a non-exclusive basis.
3. If in the provision of the Services there is processing of personal data by About Time, the Parties shall enter into a separate Data Processing Agreement.

**AGREED TERMS**

**1.**  **INTERPRETATION**

**1.1** The following definitions and rules of interpretation apply in this agreement:

**IT IS AGREED** as follows:

1. Definitions and Interpretation
   * 1. In this Agreement, unless the context otherwise requires:

|  |  |
| --- | --- |
| **“the Business”** | means, the business referred to above, as carried on by About Time from time to time during the period of this Agreement; |
| **“Business Day”** | means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in London; |
| **“Business Hours”** | 9 am to 5 pm GMT; |
| **“**Client Materials” | Means all documents, information, items, materials and data in any form, whether owned by the Client or a third party, which are provided by the Client to About Time in connection with the Services |
| "**Commencement Date"** | means, <<Insert date of Agreement>>; |
| **“Confidential**  **Information”** | means, information in respect of an individual or organisation relating to:   * + - 1. its business methods, plans, systems, finances or projects;       2. its trade secrets; or       3. the provision of products or services of the individual or organisation to which it attaches confidentiality or in respect of which it holds an obligation to a third party. |
| **“Data Protection Legislation”** | means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR; |
| **“Data Processing Agreement”** | An agreement detailing the obligations of the parties under GDPR in a form similar to that template agreement attached at Annex 1 to this Agreement. |
| **“Deliverables”** | any output to be provided by About Time to the Client as specified in a Statement of Work and any other documents, products and materials provided by About Time to the Client in relation to the Services. |
| **“Documents”** | includes, but is not limited to, inventions, improvements, promotions, formulae, designs, models, prototypes, programs, sketches, drawings, manuals, Source Codes and plans; |
| **“Fees”** | means, the amount to be paid by the Client to About Time in consideration of the Services, in accordance with the Statement of Work; |
| **“Intellectual Property”** | means, any patent, registered or unregistered trade mark or service mark, copyright, registered design or mark, any application for any of the foregoing, any right in respect of technical or commercial information and any other form of protection; |
| **“Services”** | Means services as About Time provides to the Client from time to time; |
| **“Statement of Work”** | Means the project specific details of Services that the Client wishes to instruct About Time to perform. Also known as “SOW”; |
| **“Works”** | Means all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by About Time in the provision of the Services. |
| "**Year"** | means, each period of 365 (or in the case of a leap year, 366) days beginning on the Commencement Date and any anniversary of that date during the continuance of this Agreement. |

1.2   Clause, Schedule and paragraph headings shall not affect the interpretation of this Unless the context otherwise requires, each reference in this Agreement to:

* + 1. "writing", and any cognate expression, includes a reference to any communication effected by email or similar means;
    2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
    3. "this Agreement” or to any other agreement or document referred to in this Agreement means this Agreement or such other agreement or document as amended, varied, supplemented, modified or novated from time to time and includes the schedules;
    4. Clauses and Schedules are references to Clauses and Schedules of and to this Agreement and references to Sub-Clauses and Paragraphs are, unless otherwise stated, references to Sub-Clauses or Paragraphs of the Clause or Schedule in which the reference appears.
  1. In this Agreement:
     1. all agreements on the part of any of the parties to the Agreement which comprise more than one person or entity shall be joint and several;
     2. any reference to the parties includes a reference to their respective personal representatives, heirs, successors in title and permitted assignees;
     3. any reference to a person includes any body corporate, unincorporated association, partnership or any other legal entity;
     4. words importing the singular number include the plural and vice versa; and
     5. words importing any gender include any other gender.
     6. The headings in this Agreement are for convenience only and shall not affect its interpretation.

1. Engagement of the Client and Duration
   * 1. The Client shall About Time and About Time shall provide the Services as set out in a relevant Statement of Work on the terms of this agreement (the Engagement).
     2. The Engagement shall start with effect from the Commencement Date for a x-month period from the Commencement Date or until this Agreement is terminated in accordance with this Agreement.
2. Statements Of Work
   * 1. From time to time during this Engagement, the Client may request About Time to quote to provide services (a “Request”).
     2. The Client may make such a Request and About Time may accept the request or reject it within the timescales specified by The Client.
     3. If About Time wishes to accept the Request, it will provide the information required in the Request including but not limited to estimated timescales and Fees and scope of Services in a draft written Statement of Work.
     4. The Client may accept, propose amends to or reject About Time’s draft Statement of Work.
     5. If the parties agree the terms of a Statement of Work including the Services to be provided, that Statement of Work shall be conducted in accordance with the terms of this Agreement.
     6. The Client has no obligation to make any Request or agree any Statement of Work with About Time.
     7. Each Statement of Work shall be part of this agreement and shall not form a separate contract to it.
     8. Unless otherwise agreed, all quotes provided by About Time are valid for 30 days from the date of issue by About Time and if not accepted within that period may be withdrawn and subject to re-quotation by About Time.

1. Time for Performance

Any time for provision of the Services shall be as specified in the Statement of Work and time shall be for guidance only and time is not of the essence. If no time for provision of the Services is specified the Client shall provide the Services within a reasonable time.

1. Obligations of About Time
   * 1. Throughout the period of this Agreement, About Time shall:
        + 1. provide the Services as agreed in the relevant Statement of Work;
          2. use the best quality materials, techniques and standards and ensure that the Services are provides with the care, skill and diligence required in accordance with the industry best practice;
          3. keep detailed records of all activities undertaken in connection with the provision of the Services and the Client’s reasonable request make such records available for inspection and/or provide copies at the Client’s expense;
          4. not to do or omit to do any act, the doing of which or the omission of which would or might cause a breach of this Agreement; and
          5. comply with the reasonable instructions of the Client, which may be given from time to time;
          6. observe all reasonable health and safety and security requirements that apply at the Client’s premises and that have been communicated to it.
     2. About Time confirms that it holds and maintains for the duration of the Engagement appropriate levels of applicable insurance with a reputable provider.
2. Client’s Obligations
   * 1. The Client shall:
        + 1. co-operate with About Time in all matters relating to provision of the Services;
          2. provide, for About Time, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client’s premises, office accommodation, data and other facilities as reasonably required by About Time including any such access as is specified in a Statement of Work;
          3. provide to About Time in a timely manner all documents, information, items and materials in any form (including but not limited to any logos or document templates) (whether owned by the Client or a third party) required under a Statement of Work or otherwise reasonably required by About Time in connection with the provision of the Services and ensure that they are accurate and complete in all material respects;
          4. inform About Time of all health and safety and security requirements that apply at the Client’s premises; and
          5. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable About Time to provide the Services.
     2. If About Time’s performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, About Time shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.
3. Fees and Expenses
   * 1. During the period of this Agreement the Client shall pay About Time for the Services provided by BACs within 14 days of a valid invoice:
     2. the Fees (inclusive /exclusive of any value added tax) as they fall due in accordance with the Statement of Work; and
     3. such additional amounts including agreed expenses (if agreed) as are from time to time to be agreed between the parties, having regard to any services provided by About Time in addition to the Services. These additional amounts shall fall due within a reasonable time, to be agreed between the parties from time to time.
     4. About Time shall submit to the Client invoices and receipts:
     5. for the Fees and additional amounts payable under Sub-clause 7.1; and
     6. for any expenses incurred under Sub-clause 7.1

in accordance with the Statement of Work or otherwise within a reasonable time of the payment relating to the invoice or receipt falling due.

* + 1. Payment in full or in part of the Fees or expenses claimed shall be without prejudice to any claims or rights of either party against the other in respect of the provision of the Services.

1. Intellectual Property Rights
   1. In relation to the Services and any deliverables commissioned under a Statement of Work:
      1. About Time and its licensors shall retain ownership of all IPRs in the Deliverables, excluding the Client Materials;
      2. About Time grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Client Materials) for the purpose of receiving and using the information and the Deliverables; and
   2. In relation to the Client Materials, the Client:
      1. and its licensors shall retain ownership of all IPRs in the Client Materials; and
      2. grants to About Time a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this agreement for the purpose of providing the Works to the Client.
   3. The Client:
      1. warrants that the receipt and use in the performance of this agreement by About Time, its agents, subcontractors or consultants of the Client Materials shall not infringe any rights of third parties to the extent that infringement results from copying; and
      2. shall indemnify About Time against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by About Time arising out of or in connection with any claim brought against About Time, its agents, subcontractors or consultants for actual or alleged infringement of a third party’s Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Client Materials.

1. Data Protection
   1. All personal information that is processed under this Agreement, whether concerning data subjects connected to the Client or About Time’s clients (or their business) that About Time may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and only in accordance with the Client’s express written instructions as set out in any Statement of Work and under an agreement in the same or similar form as the Data Processing Agreement attached at Annex 1 to this Agreement.
   2. Both Parties shall comply with all applicable data protection requirements set out in the GDPR with respect to any processing that they may carry out of Personal Data (where relevant).
   3. Neither this Clause nor any other provisions of this Agreement shall relieve either Party of any obligations set out in the GDPR and shall not remove or replace any of those obligations.
   4. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and About Time is the processor.
   5. Without prejudice to the generality of this clause the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to About Time for the duration and purposes of this agreement.

1. Liability Limitations
   1. We will not be responsible to You for any loss of profit or any consequential loss arising from our contract with You, and our total liability to You under the contract will not exceed the amount paid in Fees under any Statement of Work
   2. These terms do not limit our responsibility for death, personal injury caused by our negligence, fraud, breach of the terms implied by statute. All or any other warranties or terms which are implied into this Agreement by any piece of law are excluded.
   3. Neither party will be liable to the other for failure or delay in carrying out this contract which is caused by an event beyond our reasonable control, which We could not have foreseen or which was unavoidable. This includes industrial disputes, energy or transport failures, acts of God, war, terrorism, civil unrest, explosions, mechanical breakdown, natural disasters, deliberate damage, or failures of suppliers or sub-contractors to do what they are supposed to.
2. Termination
   1. Either party may terminate this Agreement at any time by giving the other party not less than 30 days’ notice in writing.
   2. Either party may terminate this Agreement with immediate effect by giving written notice to the other if the other party:
      1. commits any breach of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy it within 21 days after receiving written notice by the other party giving full particulars of the breach and requiring it to be remedied;
      2. becomes permanently incapable of providing or accepting the Services; or
      3. goes into liquidation (other than for the purposes of amalgamation or reconstruction), has a receiver appointed over a material part of its assets.
   3. For the purposes of this Agreement, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance.
   4. The rights to terminate this Agreement given by this Clause shall not prejudice any other right or remedy of either party in respect of the breach concerned or any other breach.
3. Effects of Termination
   1. Upon the termination of this Agreement for any reason:

12.1.1 any sum owing by either party to the other under any provisions of this Agreement shall become immediately payable;

12.1.2 About Time shall be entitled to the relevant proportion of the Fees to the date of termination, calculated on a time apportionment basis, but it shall not be entitled to any other payment or compensation whatsoever in respect of such termination;

* + 1. each party shall forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith destroy or return to the other party any documents and copies in its possession or control which contain or record any Confidential Information;
    2. any provision of this Agreement which is expressed to continue in force after termination shall continue in full force and effect; and
    3. except in respect of accrued rights, neither party shall be under any further obligation to the other.

1. Confidentiality
   1. Each party to the Agreement shall at all times use its best endeavours to keep confidential any Confidential Information which it or they may acquire in relation to the business and affairs of the other party to this Agreement and shall not disclose such information except with the written consent of that other party or in accordance with the order of a court of competent jurisdiction.
   2. The obligations of each of the parties contained in Sub-clause 13.1 shall continue without limit in point of time but shall cease to apply to any information coming into the public domain otherwise than by breach by any party of its obligations contained in this Agreement, provided that nothing contained in Sub-clause 13.1 shall prevent any party to this Agreement from disclosing any such information to the extent required in or in connection with legal proceedings arising out of this Agreement.
2. Relationship of Parties

Nothing in this Agreement shall render either party an employee, agent or partner of each other and neither party shall hold themselves out as such.

1. No Waiver

No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

1. Severance

If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.

1. Entire Agreement

17.1 Other than the relevant agreement for Services, this Agreement contains the entire agreement between the parties and supersedes and replaces all previous agreements and understandings between the parties. Each party acknowledges that, in entering into this Agreement, it is not relying on any representation, warranty, pre-contractual statement or other provision except as expressly provided in this Agreement.

17.2 Without limiting the generality of the foregoing, neither party shall have any remedy in respect of any untrue statement made to him upon which he may have relied in entering into the Agreement, and a party’s only remedy is for breach of contract. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.

1. Non – Assignment

This Agreement is personal to the parties and neither party may assign, mortgage, charge (otherwise than by floating charge), or sub-license any of its rights hereunder.

1. Third Party Liability

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of this Agreement this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

1. Notices and Services
   1. All notices to be given under this Agreement by either party to the other shall be in writing and shall either be delivered personally or sent by first class prepaid post or airmail prepaid post or email and shall be deemed duly served:

20.1.1 `in the case of a notice delivered personally, at the time of delivery;

* + 1. in the case of a notice sent inland by first class prepaid post, 2 Business Days after the date of dispatch; and
    2. in the case of email, if sent during normal Business Hours than at the time of transmission and if sent outside normal Business Hours then on the next following Business Day provided (in each case) that a confirmatory copy is sent by first class prepaid post or by hand by the end of the next Business Day.
  1. All notices to be given under this Sub-clause shall be delivered to the registered or principal office of the other party or to such other address as any be notified to either party by the other party in writing from time to time.

1. Arbitration
   1. All disputes, differences or questions arising out of this Agreement or as to the rights or obligations of the parties under it or in connection with its construction shall be referred to arbitration by a single arbitrator to be agreed between the parties or, failing agreement, within 14 days by an arbitrator to be appointed at the request of any party by the President for the time being of the Law Society of England and Wales having due regard to any representations made to him as to the appropriate qualifications of such arbitrator. The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force.
   2. The parties agree to exclude any right of application or appeal to the English courts concerning any question of law arising in the course of the arbitration.
2. Agreement in Counterparts

This Agreement may be executed in a number of counterparts and shall come into force once each party has executed such a counterpart in identical form and exchanged the same with the other party.

1. Set Off

Both parties may set off any matured obligation due to it from the other party against any obligation owed by it to the other party under this Agreement.

1. Applicable Law and Jurisdiction
   1. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
   2. The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been signed by the Parties

**Annex 1**

Pro forma Data Processing Agreement

[attach template DPA]

SIGNED by

[insert name of person signing for The Client]

for and on behalf of The Client

Date :

SIGNED by

<<Insert name of person signing for About Time Enterprises Limited>

for and on behalf of About Time Enterprises Limited

Date:

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