

Barton Willmore, now Stantec

Graphic Communication Website Design and Development Terms and Conditions

1. Introduction

- 1.1 These terms and conditions are to be read in conjunction with the Appointment, and which together form the basis of the contract between you and Barton Willmore Design Limited (Barton Willmore/we/us/our).
- 1.2 Please note that your contract is with Barton Willmore and any work done for you by a director or employee of Barton Willmore is given or done by that individual on behalf of Barton Willmore. No such individual will owe a personal duty of care to you. Unless instructed to the contrary, Barton Willmore shall be entitled to assume that any of your directors, employees, partners, consultants, agents or professional representatives who give instructions to Barton Willmore, are authorised to do so and that Barton Willmore may act upon such instructions.
- 1.3 Consultancy Services are provided by Stantec UK Limited (company number 01188070). Design Services are provided by Barton Willmore Design Limited (company number 2112957). If both Stantec UK Limited and Barton Willmore Design Limited provide services in respect of a Project, each company will be liable only for the services it provides and it will have no liability for service provided by the other company. The provisions of clause 10.3 will apply to the aggregate liability of Stantec UK Limited and Barton Willmore Design Limited in respect of a Project.
- 1.4 The contract is governed by and construed in accordance with English law. Any disputes or claims arising shall be subject to the exclusive jurisdiction of the courts of England.

2. Defined terms

The following definitions are used in these terms and conditions:

Agreement: our Appointment together with these Terms and Conditions of Engagement. In the event of any conflict, the provisions of the Appointment shall prevail. If you require us to enter into an alternative form of appointment for the provision of our Services, the terms of this Agreement shall prevail until the alternative appointment is completed.

Appointment: our letter confirming the scope and fees for the provision of the Services (as the same may subsequently be added to, updated or varied in writing). Where we issue an appointment letter for our Services and subsequently add to those Services in further appointment letters, all the letters will together form one Appointment dated with the date of the first appointment letter.

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

Client: the addressee named in the Appointment Letter.

Completion: the completion or deemed completion of the Site pursuant to clause 4.

Completion Tests: the tests to be carried out on the Site as set out in clause 4.

Compliance Materials: any materials that are legally required to be included on the Site, including but not limited to privacy notice, privacy statement, cookie notice, cookie banner and website terms and conditions.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is (a) identified as confidential at the time of disclosure; or (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Consultancy Services: any of Town planning, Masterplanning, Landscape planning/LVIA, Environmental and Infrastructure Planning, Heritage, Community Engagement, Retail consultancy, Development Economics or Expert Witness.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) (GDPR) and any other directly applicable European Union regulation relating to privacy.

Deliverables: any deliverables produced by us in the course of the provision of the Services including but not limited to the Site.

Design Services: any of Architectural design, Landscape design or Graphic Communications.

Effective Date: the date of the Appointment.

Fee: the fee in respect of the Services set out in the Appointment.

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

Materials: the content provided by you from time to time for incorporation in our Services and/ or the Site.

Personal Data: has the meaning set out in Article 4(1) of the GDPR.

Project: the project in respect of which you are appointing us to provide the Services.

Services: the design and development services to be provided pursuant to this Agreement as set out in the Appointment.

Site: the website described in the Appointment.

Site Management Period: the period for which we will manage the Site after its launch, as set out in the Appointment

Site Specification: the specification for the Site set out in the Appointment.

Third Party Products: those third party software products listed in the Appointment (and **Third Party Product** will be construed accordingly).

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

You or your: the persons or entities identified in the Appointment Letter as our Client. Where more than one Client is addressed in our Appointment we are instructed by all of you

3. Your responsibilities

3.1 Our ability to provide the Services is dependent upon your full and timely co-operation as well as the accuracy and completeness of any information and data you provide to us. You shall provide us with access to, and use of, all information, data and documentation reasonably required by us for the performance of the Services

3.2 You shall be responsible for the accuracy and completeness of the Materials in accordance with clause 12.

4. Development and completion of site

4.1 Once we have completed the design and development of the Site we shall run the Completion Tests, which shall test compliance of the Site with the Site Specification. The Completion Tests will be repeated in respect of any further development works agreed by the parties from time to time.

4.2 Completion of the Site shall occur when the Site has passed the Completion Tests. We shall notify you when the tests have been passed.

4.3 If any failure to pass the Completion Tests results from a defect which is caused by an act or omission of you or one of your sub-contractors or agents (**Third Party Defect**), the Site shall be deemed to have passed the Completion Tests notwithstanding such Third Party Defect. We shall provide assistance reasonably requested by you in remedying any Third Party Defect and you shall pay us for all necessary additional services or products at our then current fees and prices.

4.4 Completion of the Site shall be deemed to have taken place if:

(a) you use any part of the Site other than for test purposes; or

(b) you unreasonably delay the start of the relevant Completion Tests or any retests for a period of five working days from the proposed commencement date or unreasonably delay

completion of the relevant Completion tests for more than five working days after their commencement.

5. Third Party Products

- 5.1 If your requirements for the Site necessitate the use of any Third Party Product, we will not be liable for the functionality of the Third Party Product or for any action taken by the relevant licensor that may affect or disable the performance of the Third Party Product (**Action**).
- 5.2 If, as a result of any Action that takes place after Completion of the Site, you require us to make any changes to the Site, the work involved in implementing these changes will be chargeable at the our hourly rate in force at the time when the changes are required.
- 5.3 All Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for any Third Party Product is included in the Fee.

6. Web hosting service

Where our Services include hosting and maintaining the Site, we shall provide this aspect of the Service using a third party sub-consultant ("Hosting Service"). We shall not be liable for the functionality of the Hosting Service or for any claims, expenses or liabilities arising as a direct or indirect consequence of the use of the Hosting Service.

7. Fees and payment

- 7.1 We shall issue a monthly VAT invoice in respect of the Fee, which you shall pay within 30 days of the date of the invoice.
- 7.2 All Fees are exclusive of VAT and expenses.
- 7.3 We reserve the right to delay commencement of the Services until a purchase order has been issued in respect of the Services.
- 7.4 If you fail to make any payment due to us under this agreement by the due date for payment, then, without limiting our remedies under clause 14, we shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.5 If we address an invoice for our Services to a third party we will do so on the basis that they are paying as your agent and this shall not constitute novation or assignment of this Agreement, nor shall we owe that third party a duty of care. You remain liable for the payment of all sums due to us until full payment is received from the third party.

8. Standard of care

- 8.1 We shall perform the Services with reasonable care and skill ordinarily to be expected of a graphic design consultant or a consultant providing website design and development services (as the case may be).
- 8.2 The standard of care set out in clause 7.1 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by any Materials.
- 8.3 This Agreement sets out the full extent of our obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

9. Insurance

- 9.1 We will effect professional indemnity insurance in respect of the entire Project to an aggregate maximum of £1,000,000 (one million pounds) for any one claim or series of claims arising out of any one event in respect of any negligent act error or omission on our part in our performance of all our services on the Project, but excluding liability for pure economic loss, consequential loss and for claims in connection with pollution and contamination, asbestos, terrorism or toxic mould. We will use reasonable endeavours to maintain such insurance for 6 (six) years from the Effective Date provided such insurance remains available at that level on the open market at commercially reasonable rates and terms.

10. Limitation of remedies and liability

- 10.1 Nothing in this Agreement shall operate to exclude or limit our liability for death or personal injury caused by its negligence; any breach of the terms implied by section 12 of the Sale of Goods Act

- 1979 or section 2 of the Supply of Goods and Services Act 1982; fraud; or any other liability which cannot be excluded or limited under applicable law.
- 10.2 We shall not be liable to you for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 10.3 Subject to clause 10.1, the aggregate liability of Stantec UK Limited and Barton Willmore Design Limited under or in connection with this Agreement or any collateral contract for all our services on the Project, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed £1,000,000 (one million pounds) including any contractual or statutory interest.
- 10.4 No action or proceedings arising out of or in connection with the Services or for any breach of this Agreement whether in contract, in tort (including negligence) for breach of statutory duty or otherwise at law shall be commenced against us after the expiry of six years from and including the Effective Date.

11. Intellectual property rights

- 11.1 All Intellectual Property Rights in the Deliverables (excluding the Materials) arising in connection with this Agreement shall be our property, and we hereby grant you a non-exclusive licence of such Intellectual Property Rights for any purpose relating to the Project including but not limited to the purpose of operating the Site.
- 11.2 You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 11.3 We shall indemnify you against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 11.2.
- 11.4 The indemnities in clause 11.5, clause 11.2, clause 11.3, clause 12.4 and clause 12.5 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.
- 11.5 We shall acquire the domain name in the Site at the commencement of the Project and shall retain this until Completion of the Site at which point we shall make arrangements for the domain name in the Site to be transferred to you. You will cooperate with us in formalising this transfer and will indemnify us against all damages, losses and expenses arising as a result of any action or claim in connection with the ownership of the domain name after Completion of the Site.

12. Site content

- 12.1 You shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**). We reserve the right to remove content from the Site where we reasonably suspect that it is Inappropriate Content.
- 12.2 Where visitors to the Site are able to place content on the Site, you acknowledge that we have no control over this content and that we do not purport to monitor this content.
- 12.3 Where we are required to provide Compliance Materials, you acknowledge that the Services do not include the provision of legal advice in respect of the Compliance Materials and you must approve, and take independent legal advice on, the content of the Compliance Materials
- 12.4 You shall indemnify us against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- 12.5 We may include the statement "Designed by Barton Willmore" or similar on the home page of the Site in a form to be agreed.

13. Data protection

- 13.1 Both you and we will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, your or our obligations under the Data Protection Legislation. In this clause 13, **Applicable Laws** means (for so long as and to the extent that they apply to us) the law of the European Union, the law of any member

- state of the European Union and/or the UK Data Protection Legislation and any other law that applies in the UK.
- 13.2 For the purposes of the Data Protection Legislation, you are the data controller and the we are the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
- 13.3 Without prejudice to the generality of clause 13.1, you will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to us for the duration and purposes of this Agreement.
- 13.4 Without prejudice to the generality of clause 13.1, we shall, in relation to any Personal Data processed in connection with the performance by us of our obligations under this Agreement:
- (a) process that Personal Data only on your written instructions unless we are required by Applicable Laws to otherwise process that Personal Data. Where we are relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
 - (b) take all measures required pursuant to Article 32 of the GDPR;
 - (c) not transfer, publish, disclose, divulge or otherwise permit access to Personal Data by recipients (including Sub-processors) in jurisdictions outside of the European Economic Area unless you provide your written consent;
 - (d) assist you , at your cost, in responding to any request from a data subject (as defined by Article 4(1) of the GDPR) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (e) notify you without undue delay on becoming aware of a Personal Data breach;
 - (f) at your written direction, delete or return Personal Data and copies thereof to your on termination of this Agreement unless required by Applicable Law to store the Personal Data; and
 - (g) maintain complete and accurate records and information to demonstrate our compliance with this clause 13.
- 13.5 Either you or we may, at any time on not less than 30 days' notice, revise this clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

14. Term and termination

- 14.1 This Agreement shall commence on the Effective Date and, subject to payment to all outstanding sums, shall terminate automatically on the later of the following dates:
- (a) Either:
 - (i) expiry of the Site Management Period, if the Appointment includes a provision for Site management; or
 - (ii) Completion of the Site, if the Appointment specifies handover to you on Completion of the Site; and
 - (b) Where our Services do not include the development of a Site, the date of provision of the last of the Services.
- 14.2 We reserve the right to suspend or terminate work for you:
- (a) if any invoice is not paid, in whole or part, when due; or
 - (b) if a payment on account is not made when requested; or
 - (c) if we consider that we are professionally or otherwise obliged to do so.
- 14.3 Our contract with you, in respect of any Appointment, shall not be treated as a whole contract. If we:
- (a) suspend or terminate the Appointment; or
 - (b) the Appointment becomes abortive
- we will invoice you for work carried out up to the date of suspension, termination or when that Appointment becomes abortive.

- 14.4 We reserve the right to charge you for any work required to be undertaken as a consequence of suspension or termination. Any such invoice shall be payable immediately.
- 14.5 On termination of this Agreement by us under clause 14.2 or 14.3, all licences granted by us under this Agreement shall terminate immediately.
- 14.6 On expiry or termination of this Agreement on termination by us under clause 14.1(a)(i), we shall provide such assistance as you reasonably request in transferring the hosting of the Site to you or another service provider, subject to the payment of our reasonably incurred expenses.
- 14.7 On expiry or termination of this Agreement, all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

15. Confidentiality

- 15.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 15.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 15.3 The obligations set out in this clause 15 shall not apply to Confidential Information which the receiving party can demonstrate (a) is or has become publicly known other than through breach of this clause 15; (b) was in possession of the receiving party prior to disclosure by the other party; (c) was received by the receiving party from an independent third party who has full right of disclosure; (d) was independently developed by the receiving party; or (e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.
- 15.4 The obligations of confidentiality in this clause 15 shall not be affected by the expiry or termination of this Agreement.

16. Assignment

Neither you nor we may assign or novate this Agreement in whole or in part or subcontract our respective obligations without the written consent of the other.

17. Complaints and Disputes

- 17.1 In the event of a complaint, this should be raised by you in the first instance with your day to day contact dealing with the Services. If your day to day contact is unable to resolve the matter to your satisfaction it should be referred to a Director of the office concerned.
- 17.2 The relevant Director will acknowledge the complaint within 5 (five) working days of receipt and will endeavour to resolve the difference in discussion with the Instructing Client. Within 15 (fifteen) working days of receipt, the Director will send you a substantive response, or offer an early appointment to discuss the matter where appropriate. Alternatively, the Director will provide written reasons why the complaint cannot be dealt with in this timescale and a proposed date for a response.
- 17.3 Our Operations Director and Legal Director will receive a copy of your complaint and the Partner's response. If dissatisfied with the determination by the Director, the Instructing Client may raise the matter in writing with the Operations Director. He will review the complaint, or nominate an independent Director to do so, and where appropriate may offer to meet you to discuss your concerns. Any review or offer of meeting will normally be sent within 10 (ten) working days of referral to the Operations Director. Alternatively, the Operations Director will provide written reasons why your complaint cannot be dealt with in this timescale and a proposed date for a determination. Any meeting shall be held by both of us in mutual good faith in an attempt to resolve the difference promptly by negotiation.
- 17.4 In the event of a difference or dispute where we are engaged by more than one Client, all Clients agree that the Instructing Client will act as the intermediary for all communications. Any claim or proceedings (which for the purposes of this Agreement shall be deemed to include any form of

- alternative dispute resolution) shall only be brought by the Instructing Client but all Clients shall remain jointly and severally liable for any settlement, award or judgment in our favour.
- 17.5 If the difference or dispute is not resolved at our final meeting, we will both attempt to settle it by mediation in accordance with the current Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed, the mediator will be nominated by CEDR.
- 17.6 We are subject to the code of conduct and the disciplinary requirements of the applicable professional governing body for the Services. If you have raised a serious complaint and the matter is not settled to your satisfaction, you are entitled to raise a formal complaint with the appropriate professional governing body.
- 18. General**
- 18.1 This Agreement constitutes the entire agreement between you and us and supersedes and extinguishes all other oral and/or written communications and understandings between us relating to the Project. We shall not be bound by or be liable for any statement representation promise inducement or understanding not set out in this Agreement.
- 18.2 No terms or conditions attached to or referenced in any purchase order invoice, remittance advice or other document provided by you or on your behalf shall displace or amend the terms of this Agreement, even if we countersign the document.
- 18.3 No failure, delay or forbearance by us in exercising our rights under this Agreement shall be considered a waiver of such rights. If any provision of this Agreement is found by a court to be invalid or unenforceable in whole or in part then the remainder of that provision and of the other provisions of this Agreement shall remain in full force and effect.
- 18.4 Notices under this Agreement shall be in writing served by hand or by first class pre-paid post to the last known registered address of the parties (being the address stated on the Appointment unless subsequently updated in writing), and shall be deemed to be received upon delivery if delivered by hand or at 10.00 am on the second Business Day after posting.

19. Third party rights

This Agreement does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

Barton Willmore Design Limited
1 April 2022