

## STANDARD TERMS AND CONDITIONS

### 1. DEFINITIONS

**"Client"**: the person(s) to whom Fosway Group supplies Services.

**"Fosway Group"**: the company Fosway Group Limited whose registered office is at Purlieu Farmhouse, Ewen, Cirencester, Glos., GL7 6BY, United Kingdom, and any subsidiaries of Fosway Group Limited.

**"Party & Parties"** means either Fosway Group and/or the Client.

**"Authorised Representative"**: any director or other duly authorised employee of Fosway Group or Client.

**"Proposal"**: offer of services including project requirements, deliverables, schedules and costs.

**"Order Form"**: commercial offer of Subscription, schedule and costs.

**"Services"**: Services provided by Fosway Group pursuant to a PO or Proposal including but not limited to research, analysis or advisory consultancy time.

**"Contract"**: The Contract entered between Fosway Group and the Client on the acceptance of the Proposal and/or Order Form.

**"Subscription"**: Subscription means a 12 month subscription period paid by a Client annually or otherwise.

**"Credits"**: means Fosway Group's flexible service credit system that are purchased in advance by Client to allocate to future Fosway Group Services and products. Credits are non-transferable and expire at the end of the annual Subscription period.

### CONTRACT

1.1. Any Proposal/ or Order Form submitted by Fosway Group to the Client shall constitute an offer made on the terms and conditions contained therein and these Terms. In the event of inconsistency between the terms of a Proposal/ or Order Form and these Terms the Proposal/ or Order Form terms shall prevail. Acceptance of the Proposal/ or Order Form by the Client shall be deemed an acceptance of these terms. Fosway Group will not enter into Contracts on any other basis.

1.2. This Contract constitutes the entire agreement between the Parties with respect to the subject matter contained herein. The Parties acknowledge that no reliance is placed on any representations made but not embodied in the Contract.

1.3. Any Proposal supplied by Fosway Group are supplied subject to the Terms and Conditions and/or Licence agreement of any third-party manufacturer or supplier of those Proposal and the Client undertakes to enter into a Licence or other Agreement in relation to those Proposal if so, required by Fosway Group.

1.4. The Client agrees to enter into an Agreement in terms satisfactory to Fosway Group and at Fosway Group's discretion in relation to the future use of any Services provided by Fosway Group.

### 2. INDEMNITY and LIMITATION OF LIABILITY

2.1. This Clause 2 prevails over all other clauses in the Contract.

2.2. The Client shall fully indemnify and hold Fosway Group harmless in respect of any claims by third parties which are caused by or arise from any act or omission of Fosway Group or any employee, agent or sub-contractor carried out pursuant to instructions of the Client.

2.3. In the event of there being any deficiency in the supply by Fosway Group of any Services Fosway Group shall always be afforded a reasonable opportunity to correct such deficiency prior to any claim.

2.4. Neither Party excludes or limits its liability to the other Party for death or personal injury caused by its negligence.

2.5. The liability of either Party in respect of loss or damage to tangible property of the other Party caused by its negligence shall not exceed one million pounds (£1,000,000).

2.6. Notwithstanding any other provision of this Clause 2 except as provided in Clauses 2.2 and 2.4, the liability of either Party for a claim made by the other in respect of loss or damage suffered by that Party flowing from the Contract shall not exceed the higher of (a) the total payments made by the Client under the Contract during the two (2) years immediately prior to written notification of the claim, or (b) the sum of one hundred thousand pounds (£100,000), however that liability arises including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.

2.7. Neither Party shall be liable to the other Party for any loss of profit, production, anticipated savings, goodwill or business opportunities or any type of indirect, economic or consequential loss even if that loss or damage was reasonably foreseeable or that Party was aware of the possibility of that loss or damage arising.

2.8. Neither Party shall be liable for any claim made more than two (2) years after termination of the Contract to which the loss relates.

2.9. Fosway Group disclaims all warranties as to the accuracy, completeness or adequacy of such information. Fosway Group will have no liability for errors, omissions or inadequacies in the information provided or for interpretations hereof. Opinions expressed by Fosway Group are subject to change without notice. All content is copyright Fosway Group Limited unless otherwise identified. All rights reserved.

### 3. CONFIDENTIALITY

3.1. The Parties agree to treat in confidence the other's data documentation and information which is marked confidential or which is by its nature clearly confidential. The Parties further agree not to disclose any Confidential Information to any other person other than its own employees under conditions of confidentiality and then only to the extent required for proper implementation and utilisation and the proper performance of the Contract. Nothing shall prevent Fosway Group from using the knowledge and know-how gained in providing the Services in any combination or permutation for any other purpose.

3.2. The Client agrees not to use any confidential information relating to Fosway Group or the Services other than for a purpose authorised by the Contract other than in respect of: -

3.2.1. Any matter within the public domain unless the information is in the public domain as a result of a breach of this Agreement by the Client; or

3.2.2. Any information or knowledge possessed by the Client prior to disclosure to it by Fosway Group or rightfully acquired from sources other than Fosway Group.

3.3. Upon any termination of this Contract, each Party shall cause all Confidential Information belonging to the other Party in whatever medium it is recorded or held to be returned, deleted or destroyed according to the written instructions of the other Party.

3.4. Fosway Group reserves the right to sub-contract all or any part of its rights and obligations under this Contract and any such sub-contractor may be passed such confidential information as may be necessary for such purpose.

3.5. The provisions of this Clause 3 shall continue after the termination of the Contract.

### 4. INTELLECTUAL PROPERTY RIGHTS

4.1. The Client acknowledges that it owns no copyright or other intellectual property rights in any of the Services including but not limited to copyright in documentation and programs in either eye-readable or in machine-readable form.

4.2. The Client agrees that any deliverables are for the approved use of the client organisation only unless agreed with Fosway Group in advance.

4.3. The Client agrees the use of Fosway Group Intellectual Property is only valid during the subscription period.

4.4. The Client shall not delete proprietary information or trade mark notices appearing on any documentation supplied to it by Fosway Group at any time. Further, the Client will ensure that all copies of documentation made by it under provisions of the Contract shall carry a copyright notice in a form approved by Fosway Group.

4.5. The Client undertakes to ensure that its employees will not make copies in whole or in part of any know-how relating thereto or any other material provided or in any way obtained in eye-readable form except with the prior written consent of Fosway Group.

4.6. The Client agrees not to cause or permit anything which may damage or endanger any intellectual property rights owned or claimed by Fosway Group in relation to any of the Services or to assist or allow others to do so.

4.7. The Client agrees to notify Fosway Group of any suspected infringement of any intellectual property rights or other property of Fosway Group and to take such reasonable action as Fosway Group shall direct in relation to such infringement.

4.8. The Client agrees to fully compensate Fosway Group for any use by the Client of any intellectual property rights owned or claimed by Fosway Group otherwise than in accordance with the Contract.

4.9. The Client agrees to fully indemnify Fosway Group for any liability incurred to third parties for any use of any intellectual property rights other than in accordance with the terms of the Contract

### 5. PRICES, FEES AND PAYMENT

5.1. The prices or fees chargeable by Fosway Group in respect of the supply of Services are calculated with specific reference to the obligations undertaken and warranties and representations made by Fosway Group.

5.2. The Contract shall commence and expire, and payments shall be made by the Client in accordance with the Proposal/ or Order Form.

5.3. Invoices are raised on the purchase of Credits as described the Proposal/ or Order Form.

5.6. Payment of invoices shall be made within fourteen (14) days of the invoice date. Fosway Group shall have the right to charge interest from the invoice date on overdue invoices without further notice at a rate of four (4) per cent per annum over the base rate of Natwest Bank plc for the time being in force.

5.7. The Client shall reimburse Fosway Group for all reasonable expenses incurred in the course of providing the Services including travel, subsistence and accommodation.

5.8. Notwithstanding any other provision of this Contract Fosway Group shall be entitled to charge for time spent by its personnel while they are available for work at the Client's premises but are unable to provide services because of a failure by the Client to meet its obligations

5.9. Amounts payable by the Client are exclusive of value added tax and other taxes duties levies or other deductions or withholdings. The Client shall be obliged to pay any such taxes or other amounts notified to it by Fosway Group.

## **6. TERMINATION**

6.1. Fosway Group shall be entitled by notice in writing, without prejudicing any rights under this Contract, to terminate forthwith any provision of the Services if any invoice raised by Fosway Group is still outstanding after thirty (30) days and the Client continues to be in default for thirty (30) days after written notice of default has been given to it by Fosway Group.

6.2. Without prejudicing any rights hereunder either Party shall be entitled to terminate forthwith any provision of the Services by notice in writing:-

6.2.1. If the other Party has committed a material breach or persistent breaches of these Terms or the Contract and continues such default for thirty (30) days after written notice has been given to such Party with a request that such material breach or persistent breaches are rectified and no such rectification takes place; or

6.2.2. Upon the other Party passing a resolution for winding up (save for the purpose of amalgamation or reconstruction and where the amalgamated or reconstructed company agrees to adhere to this Agreement) or suffering a winding-up order being made against it or going into administration; or

6.2.3. If a receiver or administrative receiver is appointed and takes possession of the undertaking or assets (or any part thereof) of the other Party; or

6.2.4. If the other Party is unable to pay its debt (within the meaning of Section 123 of the Insolvency Act 1986 or any statutory re-enactment or modification thereof) or ceases to or threatens to cease to carry out its business or enters into a composition with its creditors; or

6.2.5. If any distress or execution is levied against any property of the other Party.

## **7. CLIENT OBLIGATIONS**

7.1. The Client shall provide Fosway Group staff, employees, agents and sub-contractors with such information, computer resources and other facilities as may be necessary, during and outside normal office hours, for the supply of the Services. Fosway Group shall not be liable for any loss suffered by the Client as a result of the Client's failure to provide information necessary for the proper supply of the Services.

7.2. The Client shall advise Fosway Group of all rules and regulations relating to the conduct of Fosway Group personnel which they should comply with. Fosway Group personnel shall use reasonable endeavours to comply with such rules and regulations whenever they are on the Client's premises. The Client shall take all reasonable precautions to ensure the health and safety of Fosway Group staff, employees, agents and sub-contractors while they are on the Client's premises. The Client shall fully indemnify Fosway Group for any loss or damage incurred or likely to be incurred as a result of a breach by the Client of this Clause 7.2.

7.3. The Client shall give prompt attention to any matter raised by Fosway Group relating to the obligations of the Client under this Clause.

## **8. PERSONNEL**

8.1. Without in any way restricting the right of an employee freely to accept employment and change employment if the Client induces an employee of Fosway Group to enter its service at any time during or within a period of 12 months after the completion of the Contract then the Client shall pay to Fosway Group an amount equivalent to the employee's net annual salary in recognition only of the disruption that such inducement would cause to the efficient conduct of Fosway Group's business.

8.2. All personnel provided by Fosway Group are employees of or contracted to Fosway Group.

## **9. FORCE MAJEURE**

9.1. Neither Party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure resulted from circumstances beyond its reasonable control including but not limited to, act of God or governmental act, flood, fire, explosion, accident, civil commotion, industrial dispute, or transportation or communications problems, or impossibility of obtaining materials.

9.2. Each Party agrees to give written notice as soon as reasonably possible to the other on becoming aware of an event of force majeure and such notice shall contain details of the circumstances giving rise to the event of force majeure.

## **10. NOTICE**

10.1.1. Any notice given under this Contract shall be in writing by a Authorised Representative and shall be sent or delivered by hand, post, or email to the other Party at the address stated in the Proposal/ or Order Form.;

10.2. A notice shall be deemed to have been served;

10.2.1. if it was served in person at the time of service; and

10.2.2. if it was served by post forty eight (48) hours after it was posted

10.2.3. if it was served by email, provided that such notice is also sent by first class post within forty eight (48) hours.

## **11. GENERAL**

11.1. No failure, delay or indulgence on the part of either Party in exercising any power or right under this Agreement shall operate as a waiver of such power or right.

11.2. No single or partial exercise of any power or right by either Party shall preclude any other or further exercise thereof or the exercise of any other such power or right under this Agreement.

11.3. If any provision of this Contract shall be held by a court of competent jurisdiction to be invalid or voidable such provision shall be struck out and the remainder thereof shall stand in full force and effect.

11.4. Neither Party may assign this Contract or any of its rights and obligations hereunder without the prior written consent of the other. Such consent shall not be unreasonably withheld.

11.5. Clause headings are inserted for convenience of reference only and shall have no effect in interpreting this Contract.

11.6. In the event of frustration of this Contract each Party shall be relieved of the requirement to perform obligations as from the date of frustration and the Client shall be obliged to pay Fosway Group all sums already due and payable as at the date of frustration together with payment for all work done and all expenses incurred by Fosway Group up to the date of frustration whether or not payment would otherwise have been due and payable as at that date.

11.7. No alteration or addition to this Contract shall be valid unless agreed in writing by the Authorised Representatives.

11.8. Where the Client issues a purchase order to Fosway Group relating to the Services, the Client agrees that any standard terms of such purchase order shall not apply to the Contract and such purchase order shall be accepted by Fosway Group for the sole purpose of referencing invoices.

11.9. This Agreement shall be governed by the Laws of England and Wales. The Parties will seek to resolve disputes between them by an Alternative Dispute Resolution ("ADR") technique recommended by the Centre for Dispute Resolution ("CEDR"). If the Parties fail to settle the dispute within thirty (30) days following their agreement to involve CEDR or either Party refuses to submit to ADR, the dispute shall be referred to the non-exclusive jurisdiction of the courts of England and Wales.