

Commercial conditions

- We charge 75% of the project value upon commissioning and 25% upon completion. In exceptional circumstances (e.g. when our suppliers require payment in advance) this might have to vary, with more being payable up front. All costs exclude VAT.
- If the scope or scale of the project alters for any reason it might be necessary to review these costs accordingly. This includes if you change the timetable on the project and/or the debriefing session. Reluctantly if any of the timings of the project are changed we need to retain the option to charge delay fees; if the project is delayed by more than two weeks we may charge an additional 5% of the total project cost, 10% for between one and two months, and 15% beyond that.
- If Sparkler Limited enter into any Added Value Bonus or Volume agreements with suppliers then the discount or rebate is between Sparkler Limited and the Supplier only and are retained by Sparkler Limited
- Our expense calculations include travel, accommodation and subsistence as well as any necessary costs, to deliver the project to the agreed specification.
- For projects requiring international travel, expense calculations include the costs of visas and necessary inoculations.
- Remittances paid in currencies other than sterling are subject to review if there are currency fluctuations of +/- 3% from the exchange rate used in the agreed proposal.
- Once a project is finished, Sparkler will hold on to all research materials (including audio recordings, video footage, images, personal data and pre-tasks) for no more than one year. After that time it will be securely destroyed. The only exceptions to this are:
 - Where participants have given their consent to Sparkler sharing their personal data in the form of video and/or audio and/or still photos with Sparkler's client for the client's internal business purposes, in which case Sparkler may retain that video and/or audio and/or still photos for up to 5 years from the date in which they data subject participated;
 - Where Sparkler has agreed otherwise with its client (in which case Sparkler may keep the personal data for up to 7 years from the date in which the data subject participated); or
 - Where Sparkler has a legal or regulatory obligation to keep it for any longer period.
- *[If applicable, insert appropriate Termination clause for communities. If this paragraph is deleted the default is stated in Sparkler Terms of Business]*
- All work is performed in accordance with Sparkler Terms of Business, supplied with this proposal. Instructing Sparkler Limited to commence work shall be acceptance of these terms

Sparkler Terms of Business

In these terms and conditions, Sparkler Limited is referred to as “Sparkler” and the party to whom the Proposal is addressed is referred to as “the Client” (collectively “the Parties” or individually the “Party”), the services and deliverables are detailed in the Proposal. The offer outlined in our Proposal is open for acceptance by the Client for a period of 30 days after which the offer shall lapse, unless otherwise notified by Sparkler.

- 1 The Agreement
 - 1.1 The agreement made by the Parties comprises Sparkler’s Proposal (the “Proposal”), and these terms and conditions, collectively the “Agreement” and in the event of any inconsistency or conflict these terms and conditions have priority.
 - 1.2 Variations or additions to the Agreement can be made. However, both Parties must agree to the variation or addition in writing.
- 2 Provision of Services and Deliverables
 - 2.1 Sparkler warrants that it will perform the services described in the Proposal with reasonable skill and care and in a good and workmanlike manner.
 - 2.2 Sparkler agrees to deliver the services and deliverables within a reasonable time. Both parties will use all reasonable endeavors to meet any target date, project plan or time table referred to in the Agreement.
- 3 Client’s Obligations
 - 3.1 The Client shall ensure that it has all relevant approvals and consents for Sparkler to perform the services.
- 4 Fees and Payment
 - 4.1 The Agreement sets out the fees, costs and expenses for the services, exclusive of VAT or similar taxes.
 - 4.2 In the event that invoices are not paid within 30 days from presentation of the invoice, Sparkler will be entitled to suspend performance of the services and / or to charge interest on any outstanding amount.

- 5 Confidentiality
 - 5.1 “Confidential Information” means any information (in whatever form) which is of a confidential nature disclosed by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) or which the Receiving Party learns during the provision of the services.
 - 5.2 Confidential Information does not include any information:
 - 5.2.1 which is already known by the Receiving Party without an obligation of confidence; or
 - 5.2.2 which is or comes into the public domain without breach of this Agreement; or
 - 5.2.3 which is independently developed or created by the Receiving Party without use of the Confidential Information supplied; or
 - 5.2.4 lawfully received from a third party without obligation of confidence.
 - 5.3 The Receiving Party will treat the Disclosing Party’s Confidential Information with the same degree of care as it treats its own confidential information and, as a minimum, with reasonable care.
 - 5.4 During the provision of the services and for five (5) years from completion thereof or other termination of this Agreement, the Receiving Party agrees that it will:
 - 5.4.1 keep the Disclosing Party’s Confidential Information confidential; and
 - 5.4.2 Other than disclosures required to provide the services, not disclose such Confidential Information to any third party.
- 6 Limitations and Exclusions
 - 6.1 Each Party accepts liability without limit for death or personal injury to any person due to its negligence or the negligence of its employees and for fraud, fraudulent misrepresentation or deceit.
 - 6.2 In respect of any liability other than that falling within clause 6.1, each Party’s total liability arising out of or in connection with the Agreement shall not exceed in aggregate 150% of the total fees payable by the Client under this Agreement.

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6.3 Neither Party shall in any circumstances be liable to the other whether in contract, tort (including negligence) or otherwise for:

6.3.1 Any loss of profit, loss of contracts, loss of benefit, loss of production, loss of availability, loss of data, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the other Party.

6.3.2 Any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature.

6.4 The express terms of this Agreement shall apply in place of all obligations whether expressed or implied, all of which are excluded to the fullest extent permitted by law. This Agreement constitutes the entire and only agreement in relation to the services and deliverables and supersedes all prior agreements, representations, understandings or discussions. Any terms or conditions which the Client purports to apply do not form part of this Agreement.

7 Intellectual Property and Rights of Use

7.1 Intellectual Property ("IP") means all forms of intellectual property, including, without limitation, property in and rights under copyright, patents, conceptual solutions, circuit layout rights, performance rights, design rights, designs, database rights, trade names, trademarks, service marks, methodologies, ideas, processes, methods, tools and know-how and entitlement to make application for formal (or otherwise enhanced) rights of any such nature.

7.2 IP and rights to IP owned by either Party on the date of the Agreement or created outside the terms of this Agreement and all modifications thereto and derivative versions thereof created during the services ("Background IP") shall remain the property of that Party.

7.3 The Client hereby grants to Sparkler a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IP as required to allow Sparkler to perform its obligations under the Agreement.

7.4 IP created or developed by Sparkler within the provision of the services ("Foreground IP") and rights to such IP will be owned by Sparkler and upon completion of the services and on receipt of payment in full by Sparkler, Sparkler will grant to the Client a royalty-free, non-exclusive, non-transferable licence to use any Foreground IP and Sparkler's Background IP as required to allow the Client to use the deliverables produced by Sparkler for the objectives set out in the Agreement.

8 Forecasts and Recommendations

8.1 Forecasts, recommendations and opinions (together "Forecasts") made in any report, presentation or other communication are provided in good faith on the basis of information available at the time. Whilst Sparkler will use reasonable skill and care in the preparation of such Forecasts, they cannot be considered a guarantee as to outcome or achievable results.

9 Termination

9.1 If specific termination provisions are specified in the Proposal then those shall govern termination of the services without cause. If provisions are not specified then either Party may at any time and without cause terminate the Agreement on giving 30 days written notice of termination to the other Party. The Client shall pay Sparkler all sums due in respect of the services provided and expenses incurred prior to termination

9.2 Either Party may terminate the Agreement forthwith by written notice if the other Party commits an act of bankruptcy or goes into liquidation or is put into liquidation (other than for a proper commercial purpose and whilst solvent) or a receiver is appointed or an administration order is made in respect of it.

9.3 Either Party may terminate the Agreement forthwith by written notice if the other Party commits a material breach of the Agreement and has failed to remedy the breach within 15 days of receipt of a written notice from the other Party identifying that the breach has occurred. Involvement by either party in practices prohibited by relevant anti-bribery legislation shall always be considered a material breach which is not capable of remedy.

10 Non-Solicitation

10.1 The Client shall not, either during the provision of the services or for a period of six months from completion, employ or offer employment to any member of Sparkler's project team.

11 Data Protection

11.1 Each Party warrants to the other that it has complied with and will continue to comply with the provisions of all relevant data protection legislation in relation to the Agreement. If the Client provides personal data to Sparkler, then the provisions of Schedule 1 shall apply to the processing of such personal data by Sparkler.

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12	Publicity	2.2	The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and Sparkler is the Data Processor. The Proposal sets out the scope, nature and purpose of processing by PA, the duration of the processing and the types of Personal Data and categories of Data Subject.
12.1	The Client agrees that Sparkler may and use the Client's name and logo on its marketing materials and website.	2.3	The Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Sparkler for the duration and purposes of this agreement.
13	Waiver	2.4	Sparkler shall, in relation to any Personal Data processed in connection with the performance by Sparkler of its obligations under this agreement:
13.1	No failure, delay or indulgence by either Party in exercising any power or right under the Agreement shall operate as a waiver of that power or right.	2.4.1	process that Personal Data only on the written instructions of the Client;
14	Notices	2.4.2	ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data including as required under Article 32 of GDPR;
14.1	Where the Client is required to give notice in writing to Sparkler, the notice must be addressed to the Group Legal Advisor, Sparkler Limited, 58-60 Berners Street, London, W1T3NQ.	2.4.3	ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
14.2	Where Sparkler is required to give notice in writing to the Client, the notice will be addressed to the person who signed the Agreement at the address stated in the Agreement. A notice sent by post will be deemed to have been served two business days after posting.	2.4.4	not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained;
15	Force Majeure	2.4.5	assist the Client, at the Client's cost, in responding to any request from a Data Subject 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;
15.1	Neither Sparkler nor the Client will be liable for any failure to perform their obligations, or delay in the performance of their obligations, if the failure or delay is due to causes outside their reasonable control.	2.4.6	at the written direction of the Client, delete to the extent technically practical or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
16	Law & Jurisdiction	2.4.7	maintain complete and accurate records and information to demonstrate its compliance with this clause 2.4.
16.1	The Agreement shall be governed by and construed in accordance with the laws of England and Wales and any dispute arising out of or in connection with the Agreement will be subject to the exclusive jurisdiction of the English Courts.	2.5	If Sparkler wishes to appoint a third-party processor of Personal Data, it will:
	Schedule 1 – Data processing clauses	2.5.1	get the written consent of the Client in writing; and
1	Definitions	2.5.2	enter into a written agreement with the third-party processor which incorporates terms which are substantially similar to those set out in this Schedule. As between the Client and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 2.5.
1.1	Data Protection Legislation: (i) unless and until the General Data Protection Regulation ((EU) 2016/679) (GDPR) is no longer directly applicable in the UK, and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998. Capitalised terms in this Schedule are as defined in the Data Protection Legislation.		
2	Data Protection		
2.1	Both parties must comply with all requirements of the Data Protection Legislation. This clause 2.1 is in addition to a party's obligations under the Data Protection Legislation.		