



Terms and conditions of business for APSE

1. Definitions

For the purposes of this document the following definitions will apply:

1.1. 'Association'

Association for public service excellence (apse)

1.2. 'Client'

A person, association, company or organisation that engages the association to undertake consultancy work having accepted the association's offer to provide the services set out in the association's written proposal by signature of an Order Acknowledgement consenting to the offer and the terms and conditions of business which are described in this document.

1.3. 'Assignment or engagement'

The services to be provided by the association to the client in accordance with the written proposal.

1.4 Order Acknowledgement

The order signed by a client confirming acceptance of the association's offer and written proposal.

2. Formation of contract

2.1 Unless otherwise agreed in writing, any contract between the association and a client shall be deemed to be made upon, and subject to, the terms of the association's written proposal and the terms and conditions of business described in this document. The association will not start performing the services until it has an Order Acknowledgement signed by the client.

2.2 The association accepts the jurisdiction relating to the place of execution of the contract in either, Scotland, England & Wales or Northern Ireland. All contracts shall however be construed in accordance with the law of England & Wales

2.3 Where the term 'representative' is used in written proposals, correspondence, or other documentation in relation to persons performing services on behalf of the association, this shall imply

references to representatives of apse but should not be taken to imply that such persons are agents as defined under English law.

2.4 The association accepts responsibility for the advice given by such persons on behalf of the association to clients in the course of carrying out the assignment or engagement on these terms and conditions only.

3. Calculation and payment of fees and expenses

3.1 Fees will be charged on the basis set out in the written proposal of the association.

3.2 Unless otherwise agreed, fees will be charged separately for each type of work and will be billed at four-weekly intervals. Where applicable, vat will be charged at the prevailing rate.

3.3 Fees are payable by the client net, on receipt of an invoice. Full payment must be received by the association within 30 days of the date on which the invoice was raised.

3.4 At the outset of a consultancy project or interim management assignment apse will ask for details of invoicing arrangements and in particular whether a Purchase Order system is in place. Work cannot commence until these details have been provided and if appropriate a Purchase Order raised.

3.5 Where payment is not received by the association within this agreed period, the association shall be entitled to charge interest at the rate of **3%** per annum over the base rate from time to time of the association's banker co-operative bank plc (before or after judgement) on the outstanding amount(s) and to suspend all work for the client or to terminate the relevant contract and any other contracts with the client without prejudice to any other rights and without liability to the association.

3.6 Statements provided by the association to the client, concerning the total work time or the total charges relating to the provision of a specified service or the fulfilment of a particular assignment or engagement, are non-binding estimates and are only supplied as such. Whilst all reasonable efforts will be made to ensure their accuracy, no liability is accepted in respect thereof and the association will be entitled to charge the agreed rate on the basis of the actual time spent.

3.7 Without prejudice to 3.5, if, during the course of rendering services to a client or carrying out an assignment or engagement, circumstances arise which make it clear that an estimate of total work time or total charges previously given by the association to the client will prove to be an underestimate, the association will endeavour to give the client reasonable notice and will: -

I. Specify the circumstances which pertain;

II. State the additional work involved, and

III. Estimate the increase in the total work time or the total charges which will result.

4. Expenses and office services for consultancy

4.1 Unless otherwise agreed, the client shall reimburse the association in addition to the fees charged under clause 3 in respect of all out-of-pocket expenses which may be incurred in connection with the assignment or engagement, including travel, subsistence, accommodation and the cost of providing specialist support services unless capped by agreement.

4.2 When work is carried out on the client's premises, the client will, at the client's expense, provide appropriate facilities which may include office accommodation with the use of a telephone.

5. Confidentiality

5.1 Confidential information (save to the extent that the same is in the public domain or required by law to be disclosed) concerning the client's business will not be disclosed by either the association or persons performing services on behalf of the association, to third parties, without the client's prior written consent unless otherwise required by a court of competent jurisdiction, HM inland revenue or other governmental or regulatory authority.

6. Proprietary rights and protection

6.1 All intellectual property rights including copyright which are capable of existing in any documents, computer software or information or (without limit) other materials created or provided pursuant to this contract by the association shall be and remain the association's property.

6.2 The client undertakes to keep all materials, documents and information provided to it by the association confidential to itself and its employees and not to distribute any product of the services provided hereunder to any third party without the association's prior written consent.

6.3 Any materials produced or supplied to the client by the association in which intellectual property rights are capable of subsisting shall be licensed to the client for internal use only in connection with the purposes of the project in the written proposal and such licence shall forthwith terminate if notice is given by the association terminating this contract pursuant to clause 8.

6.4 The client and the association undertake with each other not to infringe the intellectual property rights of any third party during the course of this contract.

7. General liabilities

7.1 The association undertakes to carry out the assignment or engagement with reasonable care and skill.

7.2 All reports provided by the association to the client are provided for the sole use of the client. No responsibility is accepted by the association for any reliance which may be placed upon such reports by any third party.

7.3 Nothing in this document precludes the association, persons performing services on behalf of the association or employees of the association for public service excellence, from taking such steps as are necessary in order to comply with the professional or ethical rules of the association for public service excellence or of any relevant professional body of which they may be a member.

7.4 Apart from the association's liability for personal injury or death caused by its negligence, intentional default, or fraud, the association's aggregate liability (whether based in negligence, contract, tort, by reason of indemnification or otherwise) arising under or in connection with the contract shall not exceed the fees actually paid to the association. The association will have no liability for any loss or damage to clients or their property howsoever caused (whether based on negligence or otherwise) unless caused by its intentional default or fraud. Apart from the express undertaking in 7.1, all warranties, representations, terms and conditions relating to the services implied by law are excluded to the fullest extent permitted by law.

7.5 Under no circumstances shall the association be liable for any economic loss including without limitation loss of revenue, loss of profits, cost of capital, loss of goodwill, or any incidental or consequential loss.

7.6 The rights of the parties to make a claim under this contract shall be extinguished and time barred if a claim is not made within 12 months of termination or expiry of the contract.

7.7 The limitation of the association's liability set out in these terms and conditions has been agreed by the parties as reasonable on the basis that the association's fees only cover its costs of providing the services without any addition for profit and also on the basis of who is best placed to accept risk and obtain insurance cover.

7.8 The parties agree that they shall have a duty to mitigate any loss they may incur under the contract.

8. Termination of contract

8.1 Subject to any statutory rights and obligations:

- I. The client may at any time terminate the contract by giving the association not less than 21 days prior written notice (upon payment of all costs and expenses incurred to date by the association together with all reasonable losses to the association flowing from such termination).
- II. The association may suspend the performance of its obligations under the contract during the currency of any circumstance, which in the opinion of the association, materially adversely affects the performance of its obligations hereunder.
- III. The association may, without prejudice to any other rights, terminate the contract forthwith, by giving notice in writing to the client, if:

- a. the client commits any breach of any of the terms or conditions of any contract with the association provided that having been given written notice thereof by the association, the client has failed to remedy any such breach within seven days of this notification, or

Where the client is not a local authority:

- b. the client compounds with, or negotiates for, any composition or arrangement with its creditors, or allows any judgements against it to remain unsatisfied for seven days, **or**

- c. becomes insolvent, is unable to pay its debts or fails or admits its inability generally to pay its debts as they become due

- d. institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law

- e. has a resolution passed for its winding up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger)

- f. has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied or enforced against all or substantially all its assets

- g. if, where the client is an individual, the client shall die or has a receiving order made against him or her or commits any act of bankruptcy, **or**

- h. if, where the client is an association, the client shall call any meeting of its creditors or have a receiver appointed over any or all of its assets or if an application for an administration

order shall have been made in respect of the client or on behalf of the client, or it shall enter into any liquidation, winding up or dissolution.

8.2. Inducement

The association reserves the right, at its absolute discretion, to terminate any relationship or contract in cases where an inducement has been offered/accepted and also where a matter has been declared after taking place which would make it inappropriate for the association to continue with the relationship/contract.

9. Status of consultant

9.1 The consultant (if an individual) shall be an independent contractor and not the employee of the client.

9.2 In such capacity, the consultant shall bear exclusive responsibility for the payment of his or her national insurance contributions as a self-employed person and for the discharge of any income tax and vat liability arising out of remuneration for the work performed by him or her under this agreement.

9.3 The consultant shall not be subject to directions from the client as to the manner in which he or she shall perform his or her work. Subject to agreement with you apse has the right to substitute consultancy team members where the need arises.

10. Complaints

10.1 If you have any comments or concerns about the service that we provide or, you wish to discuss any aspect of the way in which your instructions are being handled and you do not wish to raise these with the individual consultant involved, please speak to your apse contact.

11. E-mail communications

11.1 If you have the necessary facilities, we will use e-mail for communication with you unless you tell us not to. There are some specific points of which you should be aware:

- Communications over the internet are not completely secure. You will have to guide us as to what should not be sent over the internet.
- Viruses or other harmful devices may be spread over the internet. We take reasonable precautions to prevent these problems by use of a fire wall and virus checking software. If we are to communicate by e-mail, it is on the basis that you will do likewise.

12. Appointment of experts

12.1 We may need to procure the services of experts (e.g. Legal) to act on your behalf during the course of engagement to you. Where we do so, all such appointments will be as independent experts and we will not be responsible for any negligent advice or other default on their part. Your cause of action will be direct against the expert or agent.

12.2 Before the appointment of an expert, we will endeavour to obtain a quotation or estimate of the costs to be incurred and will seek your agreement on this before proceeding with the appointment.

13. Notices

13.1 Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to the party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

14 Consultancy support

14.1 An associate providing long-term consultancy support is engaged to deliver one or more specific requirements but is not subject to the day-to-day control of the client/engaging authority. They will work subject to a proposal agreed with apse. As a minimum the proposal will commit to the delivery of the client's requirements for the project(s) and provide a fee proposal based on a daily rate plus expenses.

14.2 The proposal might also include a statement about the methodology the consultant will work to and a project plan which can be more or less detailed. The agreement with the consultant shall be with apse who will be responsible for making sure that the agreed outputs from the project are achieved. Apse has the right to propose a substitute consultant should the original associate be ill, fail to or be unable to meet the requirements of the assignment for any reason.

15. Interim management

15.1 If the association makes a written proposal to provide an interim manager which is accepted by the client by signing an Order Acknowledgement, his/her services shall be supplied on the terms of the proposal and these terms and conditions. The interview by the client of any applicant introduced by the association shall be deemed acceptance of the proposal and agreement to these conditions of business by the client.

15.2 The contract for provision of an interim manager will be on the terms of the written proposal and these terms and conditions and the association will be responsible for invoicing the client and payment to the interim manager.

15.3 Interim management – employment status

15.3.1 Interim managers provided through APSE are self-employed either as sole traders or through a limited company.

15.3.2 Interim managers are responsible for ensuring that they pay income tax, national insurance and any other liabilities arising from their engagement by the client through apse at the appropriate rate. Apse offers two types of interim management as set out below. You will determine which of these options is applicable to each placement.

15.4 Temporary manager

15.4.1 In this case the interim will operate as part of the client council's team. They will be managed by the council and carry out work as specified by the council.

15.4.2 Apse will provide support to the interim and to the client council as required. The fee will be based on a day rate as set out in a proposal but the outputs are unlikely to be specific and the council will retain responsibility for managing the work of the interim. There will be no right to propose a substitute, although apse will consider agreeing to doing so should you request it.

15.4.3 Apse makes a quarterly return to HMRC in respect of associates engaged as temporary managers.

16. General Data Protection Regulations

16.1 Any data provided to apse that is necessary to complete an assignment or engagement will be held and processed in accordance with the General Data Protection Regulations as apply within the UK.

16.2 Where a client has collected data, and subsequently provided that data to APSE, you warrant that you have done so in compliance with the Regulations including obtaining any necessary consents to its use by apse in the course of the provision of the assignment or engagement.

17. General

17.1 No failure or delay by either party in exercising any of its rights under these terms and conditions shall be deemed to be a waiver of that right and no waiver by either party of any breach of these terms and conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.2 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

17.3 These terms and conditions and the written proposal including any schedules or exhibits thereto contain the complete agreement between the association and the client with respect to the matters contained in them and supersede any warranties, representations, or other agreements, whether written or oral, between the association and the client for the services.

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