

Your terms and conditions with Brightful

Unless otherwise agreed in writing, these terms ("terms") apply to all dealings between Brightful Limited ("we"/"us") and you, including any agreement to provide particular services ("Services") and/or deliverables ("Deliverables"). Your placing of an order for Services and/or Deliverables means you accept these terms, to the exclusion of any other terms that you purport to apply. No purported variation of or addition to these terms shall be effective unless agreed in writing. For a matter to be "agreed in writing" by us under these terms, it must be signed by a director or other duly authorised signatory on our behalf. References in these terms to "include" or "including" are used to illustrate or emphasise only, and do not limit the generality of any preceding words.

Partnering with us on projects

We'll send you written confirmation of all the details.

For each project or retainer ("Project"), we may provide a written and/or visual proposal which may include details of the Services/Deliverables, stages, timings, fees and expenses ("Proposal").

For each Project, we will also agree on a Statement of Works ("SoW") with you – this will include the final details of each Project (which may include details of the Project brief and approach, Services/Deliverables, KPIs, the inputs and approvals we require from you (and/or your suppliers), assumptions, dependencies, timings, fees, costs and expenses). An agreed SoW will supersede any Proposal in relation to the same Project. You and we may agree to update a SoW as the applicable Project progresses.

Each Proposal and SoW will be governed by these terms (which shall be deemed to include each Proposal or SoW as applicable, and references to these terms shall be construed accordingly). However, provisions set out in a Proposal or SoW will take precedence over the provisions in these terms if there's any conflict or inconsistency between them.

Collaborating with us

We'll do our best to do a good job for you, but it helps if you provide us with clear briefs and all the information we need to do the job well.

We will cooperate with you and use reasonable skill and care to make the Services and/or Deliverables as successful as are to be expected from a competent creative consultancy and within industry best practice. You will give us clear written briefings and all relevant information and documentation in a timely manner and will cooperate with us and ensure that all facts given are accurate. If we are unsure about any aspect of a briefing or information you have given us, we will clarify this with you.

Using third parties

If we use suppliers on your behalf, we'll do our best to make sure they're right for the job.

We act as a principal and not as your agent in all our dealings with our suppliers. We place orders on the terms that are agreed by us with the relevant supplier and will make relevant terms available to you on request. We will use reasonable care and skill in the selection and appointment of our suppliers and the terms that we agree with them. Our liabilities and obligations and your rights arising in any way in relation to any services or goods provided by a supplier shall correspond and be limited to the extent of the liabilities and obligations owed to us by, and our rights as against, that supplier. If you request any cancellations or amendments to a Project (or any part of it) that result in retrospective rate adjustments, cancellation charges or lower discounts from our suppliers, you must reimburse us for any loss or additional costs incurred. If you contract directly with any third parties, it is your responsibility to satisfy yourself as to their suitability, notwithstanding any introduction or recommendation by us, we shall have no liability for any matters arising under or in connection with such contracts.

Termination

We're sorry to see clients leave, but sometimes, it just doesn't work out. And sometimes it's just a short-term thing. But let's stay friends.

When a Project comes to an end in accordance with the terms of a Proposal or SoW (as applicable), our agreement with you regarding that Project terminates automatically and there's no need for either of us to serve notice.

Where we are engaged on an indefinite retainer basis or for a fixed term of more than 6 (six) months, termination by either party is subject to at least 3 (three) months' prior written notice (and for fixed-term contracts our remuneration will be pro-rated up to the expiry of the notice period).

Otherwise, where a Proposal or SoW (as applicable) identifies clearly defined Project stages with separate fees ("Stages"), you may terminate on completion of, or during the course of, a Stage but you shall still be liable for our fees up to the end of that Stage, including any fees relating to work started but not yet presented or not yet finalised. Where a Proposal or SoW (as applicable) has no Stages, you may terminate subject to at least 2 (two) weeks' prior written notice, but you shall still be liable for our fees up to the end of the Project. In any event, you will reimburse us for any third-party cancellation charges and any costs to which we are committed. Notice of termination must be given in writing.

Without prejudice to any other right or remedy for breach or non-performance, either we or you may, with immediate effect by notice in writing to the other, terminate a Project if the other: (a) is in material breach of any of these terms and, if capable of remedy, fails to remedy it within thirty (30) days of receipt of written notice to do so (such notice to include a warning of the intention to terminate); (b) passes a resolution for or is the subject of a petition for winding up (other than for the purposes of a solvent amalgamation or reconstruction); (c) has an encumbrancer take possession of or a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; (d) is subject to

anything analogous to any of the foregoing in any jurisdiction; or (e) ceases to carry on business.

Termination shall not affect any rights, remedies, obligations or liabilities of you or us that have accrued up to the date of termination, including the right to claim damages in respect of any breach which existed at or before the date of termination. Any provision of these terms which expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

Making alterations

Let us know if you need anything altered, and we'll do our best to help

You may request a change to the scope of a Project, or the timescales for completing it (or part of it) in writing. We will take all reasonable steps to comply with your request provided that we are able to do so on our own account and also considering any contractual obligations to our suppliers. Within a reasonable time of receiving your change request, we will provide you with a written estimate of the likely time required to implement it, all additional fees arising from it (including any additional third-party costs) and any other impact of the change on the Project. You may then decide whether or not to proceed with the change. Any agreed change will be documented in writing (including by email). We may charge you for the time it takes us to process change requests in accordance with our standard charging rates.

Signing work off

Make sure you're happy with the work before you give us your autograph

It is your responsibility to promptly check and correct or approve material that we submit to you for this purpose at various points, whether as part of an approval Stage identified in a Proposal or SoW or otherwise. We shall not be responsible for any errors or other matters in the material that you have approved. We shall not be obliged to start any Stage until you have approved its commencement. Where we request approval in writing (including by email) for any matter, approval shall be deemed given if you do not respond in writing to the contrary (including by email) within 3 (three) working days.

Let us know who's in charge

Please let us know who is responsible for approving work.

Unless you indicate in writing, whether in a Proposal or SoW or otherwise, that certain individuals only are entitled to give approval(s) for the purposes of these terms or for any particular Project, we shall be entitled to assume that any of the persons dealing with us on behalf of your organisation may do so.

Keeping you informed

We'll do our best to update you regularly on Projects

We will do our best to keep you updated on the status of Projects where applicable and appropriate. As part of this, we may provide you with monthly cost updates for Projects, which may include details of actual costs incurred compared with the budget. We may also arrange meetings and calls with you to review the status of Projects (including scope and any changes to this) and any other relevant business. Where appropriate, project meetings will be managed through an agreed agenda. If we choose to circulate notes from meetings and calls on key issues, we will try to do so within 2 (two) working days after each meeting or call, and unless questioned by you within 3 (three) working days after receipt, these notes will be taken as an accurate record.

Fees

We'll do our best to let you know in advance how much things cost and if things change.

Unless a fixed fee or other remuneration is agreed in writing (for example in a Proposal or SoW), our fees shall be calculated on our standard charging rates for the personnel working on the Project. We reserve the right to increase our fees and rates annually in line with the Retail Prices Index. If a Project increases in scope or is delayed or postponed, as a result of your act(s) or omission(s), we also reserve the right to charge you additional fees as a consequence.

Third-party costs

Bringing in specialists and what it will cost.

Production costs and other third-party charges (including photography, illustrations, printing, film production, software licensing, web development and web hosting) will be invoiced in addition to our fees, together with a standard mark-up. Where third party suppliers (e.g. some software licensing) cover other clients as well as you, the charges will be allocated pro rata on a fair and equitable basis.

Expenses and materials

Out-of-pocket costs.

Costs for expenses and materials will be invoiced in addition to our fees. These include items such as travel, subsistence, couriers, colour printouts and presentation materials.

We are Brightful

**20-22 Wenlock Road, London, N1 7GU,
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Invoicing

Keeping things fair and square

Unless otherwise agreed in writing (for example in a Proposal or SoW), we will invoice you in arrears at the end of each Stage (or the Project if there are no Stages). However, if we consider it necessary, we reserve the right to invoice the estimated fees, costs and charges (or a proportion of these) for each Stage (or the Project if there are no Stages) in advance or during a Stage or the Project, with the balance (if any) invoiced monthly or at the end of the Stage or the Project, and we will let you know the revised payment terms in writing. Where actual fees exceed estimate, we may increase the amount(s) invoiced by way of reconciliation as soon as this is apparent.

Payment

We know you'll uphold your side of things

You must pay our invoices within 14 (fourteen) days after invoice date. All payments shall be invoiced and made in sterling unless otherwise agreed in writing. If payments are agreed to be invoiced in a foreign currency, the foreign currency figure must be calculated as on the date of remittance and you will reimburse us for any currency exchange costs and for any loss arising from currency fluctuations (if these fluctuations mean that the amount remitted to us is less than 95% (ninety five per cent) of the original sterling figure that was to be invoiced). VAT will be added on our invoices, where appropriate, at the prevailing rate. We may charge interest on undisputed amounts not paid at the due date, to accrue daily at the rate of 4% per annum above the base rate from time to time of the Bank of England. Where we ourselves face surcharges from any third-party supplier on undisputed amounts not paid by the due date as a result of late payment by you, you will reimburse us the amount of such surcharge/interest charged by the supplier. Where any undisputed invoices are outstanding, we also reserve the right to refuse to place third party orders on your behalf until these are paid, to suspend any associated work without liability to you and/or to require payment in advance for any future Services/Deliverables. You will notify us immediately in writing if you dispute any invoice (or part of it) and provide all evidence reasonably necessary to justify the dispute. You and we will negotiate in good faith to promptly resolve any dispute.

Clearances

Make sure you double-check compliance

Unless otherwise agreed in writing (for example in a Proposal or SoW), we will not investigate as to whether any material we create or provide (including designs, brands, creative work and software) may infringe third party trade or service marks, patents or fail to comply with laws or regulations (in each case "Infringement"). We give no warranty and accept no liability in relation to any infringement and related risks. It shall be your sole responsibility to ensure that any such material used by you or on your behalf shall not give rise to any Infringement. Where we do agree to source investigations, these shall be subject to additional charges and terms agreed in writing. Where they are carried out by a third party, your remedy in the event of any results being inaccurate or incomplete shall be against the provider rather than against us.

Intellectual property rights

Who owns what?

Any materials provided by us in connection with a Project shall comprise one or more of: (i) materials created by us specifically in connection with the Project ("Project Specific Materials"); (ii) materials created by us otherwise than specifically in connection with the Project ("Background Materials"); and/or (iii) materials provided by a third party ("Third Party Materials"). On completion of each Stage (or Project if there are no Stages), we hereby assign to you by way of present assignment of future rights all intellectual property rights in the Project Specific Materials but provided always that

Recognition

When we do great work, we like to show off a bit. We hope you don't mind.

You agree that we shall be entitled to due acknowledgement in respect of work and Deliverables provided by us, whether created wholly or partly to our design or with the benefit of our Services. Unless otherwise agreed in writing, this will include a written credit with reasonable prominence within all materials, including a credit at the bottom of the homepage for any website design/build work. For the purpose of showcasing our services, we shall be entitled at any time to use all or part(s) of any such work and Deliverables that have ceased to be confidential in such media as we may require.

Data protection

Looking after your data.

Each party will ensure that any mailing list or customer database supplied to the other party complies with all data protection and privacy legislation in force from time to time, including the The EU General Data Protection Regulation, known as GDPR ("the Act") brought into force in May 2018. Each party will comply with the relevant provisions of the Act. For further details of our privacy policy go to: <https://wearebrightful.com/privacy-policy>

Financial services and other compliance

Please comply with the rules.

Where any material we create for you comprises or includes an invitation or inducement to engage in investment activity (as defined under the Financial Services and Markets Act 2000 ("FSMA")), you are solely

you have complied with all of your obligations relating to payment. If Project Specific Materials are assigned to you, we shall be entitled to continue to use those materials for the purposes of the Project and promoting our own business.

We shall retain ownership of all intellectual property rights in Background Materials. We grant you such usage rights in the Background Materials as are reasonably necessary for you to be able to use those materials as envisaged by the Proposal or SoW (as applicable) but provided always that you have complied with all of your obligations relating to payment.

We shall use reasonable endeavours to obtain all usage rights in Third Party Materials as are reasonably necessary for you to be able to use those materials as envisaged by the Proposal or SoW (as applicable). However, you accept that usage rights obtained for photography, imagery etc. will typically, unless otherwise agreed in writing, be for limited usage over a period of 12 (twelve) months or less. You undertake to comply strictly with all Third-Party Materials usage limitations notified to you, whether in a Proposal or SoW or otherwise. Any of our know-how, ideas, strategies, techniques, methods or methodologies that we use or create during the Project (including all intellectual property and other proprietary rights in them) belong to us, and only us. Nothing in these terms prevents us in any way from using these, and we will not assign or license any intellectual property or other proprietary rights in them to you.

Confidentiality

Your business is our business (but nobody else's)

You and we acknowledge a duty, when these terms are in force and after their expiry or termination, not to disclose without the other's prior written consent any confidential information concerning the other's business, its business plans, customers, clients, associated companies, know-how or branding/communications concepts, except to such of its employees, officers, representatives or advisers who need to know such information for the purposes of exercising that party's rights or obligations under these terms. We acknowledge our responsibility to treat in confidence all confidential information and statistics about your business which you supply in the course of our work for you or resulting from market research or surveys commissioned and paid for by you. Equally, the ideas embodied in any Proposal, and any other ideas we may propose, whether in connection with a Project, in pitching for other work or otherwise, are presented on a confidential basis, and you must not disclose them to third parties or use them in any way without our prior written permission, other than as necessary in the context of a Project once agreed. Where we work on potentially conflicting accounts, we will ensure that appropriate technical and operational measures are in place, designed to maintain a high level of confidentiality. The confidentiality obligations set out in this paragraph do not apply where disclosure is required by law or by the rules of any relevant stock exchange or by any relevant national or supranational regulatory authority, or to the extent that information comes into the public domain through no fault of the receiving party or was independently in the possession of the receiving party other than as a result of unlawful disclosure. However, the fact that separate components of an idea may already be in a party's possession or in the public domain does not mean the idea itself falls outside the protections in this paragraph.

We may also use and/or make available certain third-party tools, coding, methodologies and software solutions in relation to the Project ("Proprietary Material"). Nothing in these terms grants you any rights in respect of Proprietary Material, other than any rights of use as may be specifically agreed in writing from time to time (including in a Proposal or SoW), subject in each case to any standard terms of use for the relevant product(s). You must not directly or indirectly seek to copy or reverse-engineer any Proprietary Material.

You and we shall execute such documents and take such steps as the other party may reasonably require to fulfil the provisions of and to give you and us the full benefit of these intellectual property rights terms.

responsible and liable for ensuring compliance with the FSMA and any rules, regulations and guidance of the Financial Conduct Authority from time to time and for ensuring that all necessary approvals for the purposes of section 21 of the FSMA are provided by an authorised person. We are not an "authorised person" (as defined in section 31 of the FSMA).

You and we both agree to comply with all applicable laws relating to anti-bribery, anti-corruption, slavery and human trafficking, and not to engage in any activity, practice or conduct which would constitute an offence under these laws.

Warranties

We do our best, but we're human. We know the same applies to you.

We warrant that the Services will be supplied with reasonable care and skill, in accordance with applicable industry standards and by personnel whose qualifications and experience are appropriate for their duties. You and we both represent and warrant to each other that we have the full and unrestricted right to contract with the other on these terms and that doing so will not put you or us in breach of any existing contract with a third party. You will ensure that anything you or your suppliers provide for use in relation to a Project is accurate and complies with all laws and regulations and does not infringe any third-party intellectual or other rights. You will inform us immediately if you have reason to believe that any information in materials submitted by us for approval is incorrect or misleading or in any manner likely to be actionable at law. If any material provided by us as part of a Project consists of digital content, you acknowledge and agree that your use of those materials may not be uninterrupted and error-free. We will take reasonable precautions to ensure that digital content does not contain any viruses, Trojan horses, worms, time bombs or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information, but cannot guarantee that this is the case.

We are Brightful

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Unless they are set out in these terms, we specifically disclaim all warranties and/or conditions, express or implied, in relation to the Deliverables and/or Services, including any implied term, condition, representation or warranty of satisfactory quality or fitness for a particular purpose.

Indemnities

Don't worry. It's (probably) covered.

We shall indemnify you against all damages, losses and expenses suffered by you as a result of or in connection with any claim made against you that your use of the Project Specific Materials or Background Materials (in the form provided by us and without any modification or amendment) in accordance with the Proposal or SoW (as applicable) infringes or is alleged to infringe any third party's copyright in the EU, provided that we knew or ought to have known of the infringement.

You shall indemnify us against all damages, losses and expenses suffered by us as a result of or in connection with any claim made against us that the material supplied to us by you or on your behalf infringes or is alleged to infringe any third-party intellectual property or other rights when used in connection with a Project and in accordance with any limitations previously agreed in writing. You will also indemnify us against any loss or liability arising from the transfer of employment of any individual(s) to us by action of law as a result of any service provision switching to us (from you or another provider), including any liability arising from our dismissal of any such individual(s).

The indemnities in this paragraph are subject to the indemnified party: promptly notifying the indemnifier in writing of the circumstances giving rise, or likely to give rise, to indemnification; making no admission or settlement without the other's prior written consent; giving all assistance and information reasonably requested; and giving the indemnifier control over the defence and settlement of any claim.

Estimates and targets

We'll always take an educated approach.

We will use reasonable endeavours to ensure the accuracy of all estimates, targets and commitments as to the number, proportion or type of people likely to be exposed to any work, number of exposures per person, cost of achieving exposures, savings/discounts achievable for media rates and other costs, accuracy of lists/databases, or marketplace effectiveness of any Project (including as to response rates). But as these are matters which are ultimately beyond our control, no warranties are given in such regards, and we will not be liable for any losses suffered by you or any third party by reason of your reliance on such estimates, targets and commitments.

Service levels

We'll do our best to be available when you need us.

We will use all reasonable endeavours to respond to telephone or email contacts from you within 2 (two) hours during normal business hours and by 09.30 the next working day in other cases. Our normal business hours are 09.30 – 18.00 Monday to Friday. Our normal production studio hours are between 09.00 – 17.00 Monday to Friday. Any variation to these hours shall be agreed in writing.

Liability

Sometimes, things go wrong, so let's be clear when that rests on our shoulders.

We shall not be liable in any way for loss, damage or delay consequent upon any circumstances beyond our reasonable control. Notwithstanding any other provision in these terms, we shall have no liability to you, whether under these terms or otherwise, and shall be deemed not to be in breach of these terms (or liable under any indemnity as the case may be) as a result of: (i) any delay by you or any third party (other than a third party acting as our supplier or subcontractor); (ii) your breach of these terms (including a Proposal or SoW); (iii) your failure to give reasonable and timely cooperation; (iv) your failure to provide any required approvals or inputs; (v) your failure to meet or provide any assumptions or dependencies detailed in a Proposal or SoW; (vi) any out of scope matters detailed in a Proposal or SoW; (vii) any material, information, design, specification or instructions supplied by you or on your behalf or from any modification of any Deliverable on your part; or (viii) any third party claims brought in or in respect of Canada or the USA. We shall not be liable to you, whether under these terms or otherwise (including under any indemnity), for any indirect, incidental, special or consequential loss or damage (including loss of profit, loss of anticipated savings, production costs or recall, re-printing or correction costs, business interruption losses and loss of data). Our total liability to you in respect of each Project (whether under these terms or otherwise, including under any indemnity) is limited to whichever is the lesser of £200,000 (two hundred thousand pounds) and the total fees paid to us for the relevant Project.

With digital work, we rely on you to give us in advance all relevant information as to the IT environment in which it is intended to function. We will not be liable for any matters arising from your failure to do so or from any change in such regard (unless agreed in writing in advance). Further, you acknowledge that digital content (including software, and streamed video for internet/intranet) cannot be tested in every possible combination and operating environment, that not all errors are necessarily capable of rectification and that the existence of such errors shall not constitute a breach of these terms. Unless otherwise agreed in writing, the Services do not include support and maintenance of third-party software, and we give no warranty or representation that any third-party software (or other third-party elements) will continue to be suitable or that any support will continue to be available. Where cloud computing solutions (and other distributed storage/processing solutions) are used, you acknowledge and accept the increased risk of the integrity and security of information being compromised. We shall have no liability in relation to such risks. We will inform you in advance if we propose to use any such solution. With Projects

involving user-generated content, we will not be responsible for moderating content unless otherwise agreed in writing and shall have no liability in such regard, even if we do exercise some level of editorial control.

Unlimited liability

In the worst-case scenario...

Notwithstanding any other provisions herein, nothing in these terms shall limit in any way our liability for death or personal injury caused by negligence or for fraud or any other liability that may not lawfully be limited.

Non-solicitation

Looking out for our business.

You agree that you will not, whether directly or indirectly, either on your own behalf or in partnership or association with any person, firm, company, organisation or otherwise and whether as principal, agent, consultant, contractor or otherwise, during the course of any Project and for a period of 12 (twelve) months from the end of a Project solicit, induce or entice away or attempt to solicit, induce or entice away any employee, contractor, affiliate or representative who worked for us on the Project at any time. You will also not encourage, assist or permit any third party to do the same.

Subcontractors

Getting some extra help on the job.

From time to time, we employ subcontractors, which we remain liable for. We ensure that subcontractors agree relevant terms and conditions, contracts and non-disclosure agreements.

We may also agree to work with or manage your suppliers, subcontractors or other third parties nominated by you in relation to a Project, but if we do so you still remain liable for them.

Retention of title

Until you pay us in full, we own the Deliverables.

Notwithstanding any other provision of these terms, no title in relation to any Deliverables shall pass to you unless and until you have paid us in full and unconditionally all sums due in relation to the Deliverables and any associated Services. Pending the passing of the title, you shall keep Deliverables separate from all other items.

Conflicts

Working with others.

Whilst we are engaged on a Project, we will notify you before we provide services to a competitor within your industry, but only where we reasonably think there is a conflict of interest.

General

Keeping it between us.

These terms (including each Proposal and SoW (as applicable)) constitute the entire agreement and understanding of you and us relating to these terms and supersede any previous agreement or understanding between you and us in relation to the same. Neither you nor we have relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person that is not set out in these terms. No provision of these terms or otherwise relating to a Project shall be enforceable by anyone other than you and us. If any part of these terms is disallowed or found to be ineffective by any court or regulator, the other provisions shall continue to apply. These terms and any agreements between you and us are governed by English law and the parties submit to the exclusive jurisdiction of the English courts. If you are based outside of England and Wales, you must appoint an agent acceptable to us based in England or Wales to receive service of any proceedings, and you must notify us of their name, address and fax and telephone numbers.

Please sign these Brightful terms so we can commence work promptly.

Your acceptance of our engagement on the terms set out in the Statement of Work we will provide you shall operate to create a legally binding agreement between us comprised of our Statement of Work and these Terms and Conditions, which can be found on the footer of our website. Please confirm your acceptance of such terms by signing a copy and returning a signed copy to us.

If you do not provide us with a countersigned copy of these Terms and Conditions and we commence performance of the Services as stated in our Statement of Work at your request, we will consider that, by your conduct, you have accepted the terms in our Brightful Terms and Conditions, and we will perform the Services on that basis in accordance with the Agreement. Where there is any conflict between the Terms and Conditions and the Statement of Work, the wording in the Statement of Work shall take priority.

Print name (client signatory): _____

Sign name: _____

Date: _____

About Brightful

We make content flow by solving brand, digital and culture problems for complex businesses.

Our specialist martech consultants and creative technologists help our clients transform their marketing operations and content supply chains at scale.

Whether it's a content, brand, digital, or culture problem, we'll solve it.

Brightful. Make Content Flow.

wearebrightful.com