

# Terms of Business (updated February 2018)

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These are the terms of business on which BeThere Global (UK) Ltd. (company number 05455613) with registered office 8 Roedeer Close, Emsworth, PO10 7GP, UK, (“we”, “us” or “our”) offer video and audio composition, recording, editing, production, hosting, and streaming services, graphic and web design and development, and any other services which we may offer from time to time (individually and collectively the “Service”).

These terms along with the contents of our written proposal, if we supply one, form the basis of our ongoing relationship with you (“Terms”). Where we supply a written proposal, then in the event of a conflict between that proposal and these terms, the proposal will prevail.

Subject to the paragraph above, these terms apply until varied or replaced with new terms from time to time. We will post a copy of any revised terms on our website with the date they were varied, and notify you when you next make an enquiry for our services by sending you the updated terms. The website notice will be adequate notice of the amendments for services you request after the date on which our terms are changed. Only changes to the Terms agreed by us will be valid.

For sales of goods and services via the telephone or internet, the Consumer Contracts Regulations 2013 apply in relation to consumers, however you will have no cancellation rights if you request that we supply our Service to you before expiry of the 14 days’ cancellation period.

## **1. Payment**

By engaging us to perform the Service, you agree to pay our invoices within 14 days of issue. Delivery of our work is conditional upon all relevant payments being made to date.

All our prices are subject to VAT at the current rate, and we recommend you take appropriate professional advice regarding your liability for tax in connection with your engagement of us. We reserve the right to charge interest on overdue invoices from the date payment was due until the date of payment, at a rate of five per cent above the base rate of the Bank of England.

If your procedures require that an invoice be submitted against a purchase order prior to payment, you shall be responsible for issuing such purchase order and any terms and conditions printed on such an order shall have no effect unless specifically accepted by us in writing.

Should a cheque of yours be dishonoured, then we shall be entitled to charge a fee of up to £50 per dishonoured cheque to cover any administrative work or bank charges incurred by us.

## **2. Sign off**

We will request sign off of our work at various stages of a project. Upon receiving such a request, and unless you notify us of a problem with the work beforehand, you shall be deemed to have accepted that work when you communicate your acceptance to us either orally or in writing, or upon the expiry of 10 working days after you receive our request, whichever is the earliest.

### 3. Cancellation

We generally request payment of a deposit to go ahead, and should you decide to cancel the Service this deposit will not be refundable except in exceptional circumstances, and at our discretion. This is because we book in staff or contractors, arrange for marketing, hire equipment, handle enquiries and otherwise run our business in reliance upon the projects we have scheduled.

If you choose to cancel the Service at any time, we will suffer a loss unless you pay us the agreed fee for the Service. You therefore agree that we will invoice for and retain your deposit as compensation if you decide to cancel.

You acknowledge that our loss will be higher if you decide to cancel nearer to the projected date for completion of the Service, and agree both that we may charge you a cancellation fee calculated according to the table below, and that such a fee represents a reasonable pre-estimate of damage we may suffer should you choose to cancel the Service.

The cancellation fee shall be calculated as a percentage of the balance of the fee agreed for the Service, less any deposit paid:

| Days from projected completion of the Service | Percentage Payable |
|---|--------------------|
| 28 – 72                                       | 20%                |
| 27 – 15                                       | 50%                |
| 14 – 0  | 100%               |

### 4. Variations and revisions

Subject to the clause 2 and unless otherwise agreed by us in writing, if you notify us of a problem before accepting our work we will take into account your comments and implement one round of amendments to the work, provided that those amendments are within the scope of the Service for which we have quoted and for which you have agreed to pay. You agree that any further changes or other work you require may be charged at our hourly rate of £85 plus VAT or such new hourly rate as we may introduce for all clients, and notify you of in writing.

Following receipt of your notification to proceed with the Service, any variation of the scope of the Service must be agreed by us in writing. Where possible we shall assess the effect of a proposed variation on any prices quoted or timescales given, and communicate to you the basis on which we would agree to your request. Where, due to the urgency of your request or otherwise, we do not offer a quote for additional work, you agree that we may invoice for work which is outside the scope of any agreed price at our hourly rate of £85 plus VAT or such new hourly rate as we may introduce for all clients, and notify you of in writing. You further agree that we may invoice you for any other costs to us arising out of your request, such as transport or equipment hire, and you agree to pay such invoices within 14 days of issue.

For the avoidance of doubt such variations to the scope of the Service include, without limitation, changes to filming dates, times or locations, timescales for delivery of work, equipment required, the availability of individuals, the availability of permissions, consents and licences, access to and capacity of telecommunications networks, and all other elements which impact on our ability to perform the Service, the work involved, or the cost to us of doing so.

## 5. Your obligations

To enable us to perform our obligations under this agreement, it is important you co-operate with us, and provide the information and access to facilities that we reasonably require. You agree:

- a. To, in a timely manner, review documents and multimedia delivered in the course of the Service, return sign off forms, make decisions, and take all other actions required of you to enable us to perform the Service.
- b. To provide us with access to the following where reasonably required to perform the Service: any systems, data or information; your premises or the premises of others; individuals able to provide information or assist with technical issues; artwork, video, audio or other multimedia; equipment; audio and video feeds; and internet access of sufficient availability and capacity.
- c. To ensure that all premises visited by our staff and subcontractors are safe and accessible. We may remove our personnel from a location if it is reasonably deemed unsafe in our sole discretion, in which case you will be liable to us for any costs incurred as a result.
- d. To brief us through a single project manager with final authority to make all decisions on your behalf, and who will secure signature by you or on your behalf where required.
- e. Not to ask us to perform the Service in a way which might encourage violent or anti-social behavior, damage to property or the causing of nuisance or injury to any individual, or otherwise conflict with the public interest.
- f. Where we create or host web pages for you, to allow us to incorporate a byline at the end of those pages crediting us for our work.

You agree that you are the owner of, or have the necessary permissions or consents to use any material that you supply for the purpose of the Service, and that you will obtain in advance the necessary consents and permissions for us to film or otherwise record individuals, locations, structures, objects or any information relating thereto.

You agree to indemnify us and keep us indemnified from and against any and all loss, damage or liability (whether criminal or civil) suffered, and legal fees and costs incurred by us and arising from our performance of the Service or your breach of these Terms including:

- a. any act, neglect or default of you or your agents, employees, licensees or customers;
- b. any claim by any third party alleging libel or slander in respect of any matter;
- c. any publication or possession of material which is alleged to infringe intellectual property rights (IPR), to be obscene or indecent, or otherwise unlawful.

## 6. Our obligations

- a. We will consult with you on matters relating to the Service.
- b. We maintain adequate insurance cover with an insurance office of repute to cover our liability to you for any failure to fully or properly perform our duties under this agreement, and shall produce a copy of the insurance policy for your inspection, on request.
- c. Any timescales provided for completion of work in the course of the project are estimates and are dependent on a number of matters, including your own delivery of material and information in a timely manner. In principle, we agree to deliver the Service within the projected budget and timescale agreed with you and to let you know if there is to be any material alteration of these. However, time shall not be of the essence unless agreed by us in writing.
- d. We will use reasonable skill and care in performing the Service and warrant that its quality will conform to generally accepted industry standards and practices. However, we do not guarantee the availability or capacity of telecommunications or broadcasting facilities, nor that multimedia or websites we supply will be accessible to or in a format suitable for all of the people you wish to access them.
- e. In providing the Service, we warrant that any intellectual property (IPR) we create for the purpose of the Service is our own original work. Where we use IPR belonging to a third party in providing the Service we warrant that we are entitled to do so. If any charges are payable for such use, we will bring this to your attention as soon as we know.

## 7. Confidentiality

This confidentiality clause shall survive termination or expiry of this agreement.

Any confidential information we exchange with each other (“Confidential Information”) shall be kept secret, safeguarded and not divulged by either party. We agree to take all reasonable security precautions in the safekeeping of the Confidential Information. The Confidential Information is provided exclusively for the purpose of the Service and should not be used in any other way. Any Confidentiality Agreement signed between us will continue in force as if it was part of this clause.

Notwithstanding the above, we shall be entitled to divulge the Confidential Information to a subcontractor for the purpose of providing the Service, provided that such contractor has entered into a confidentiality agreement with us.

## **8. Intellectual property rights**

For the purpose of these Terms Intellectual Property Rights or IPR means any rights including copyright, trade mark, patents, designs, know how or other confidential information whether existing or created in the course of providing the Service.

All IPR owned by us and created or supplied to you by us in the course of providing the Service will belong to us. Upon receipt of all sums due to us for the Service, we shall grant you a non-exclusive, worldwide, royalty free, perpetual licence to use such IPR for all purposes falling within the scope of the Service. We may suspend or revoke this licence in the event of cancellation in accordance with clause 3, or your failure to settle our invoices as they fall due, or any material breach of these Terms by you.

All other IPR not owned by us, and supplied to you by us in the course of providing the Service shall remain the property of the relevant third party, and is provided under that third party's license terms.

## **9. Limitation of liability**

We shall not be liable to you for any loss of revenue, goodwill, opportunity or business, whether direct or indirect arising from the Service. This shall apply even where such a loss was reasonably foreseeable or we had been made aware of the possibility of your incurring such a loss.

Our total liability to you, other than for death or personal injury resulting from our negligence, shall be limited to the lesser of:

- a. £5,000; or
- b. the sum paid by you to us in exchange for the Service.

## **10. Sub-contractors**

We reserve the right to assign certain aspects of the work to subcontractors to ensure appropriate skills, and on-time completion. We will only use industry recognised professionals and agree to accept full responsibility for the Service even if subcontractors have been involved.

## **11. Term and termination**

Unless otherwise terminated in accordance with these Terms, our agreement with you in respect of a particular piece of work shall continue until the later of payment of all monies owed to us by you or your acceptance of our work. Upon termination or expiry of these Terms all money due to us in respect of work already completed shall be paid immediately.

Where there is a fundamental breach of this agreement either party will be entitled to terminate this agreement by written notice.

In the event of national emergency, war, or prohibitive governmental regulations, or where continuance of the Service would give rise to a breach of a contract to which we are party, or in the event that any cause beyond the reasonable control of either of us renders performance of the Service impossible, we shall be entitled to terminate our agreement with you by written notice. Should such event render performance impossible for a continuous period of 6 calendar months, you shall be entitled to terminate this agreement by written notice.

## 12. Governing law and jurisdiction

The validity, construction and performance of the terms between us shall be governed by English law. Any dispute arising under or in connection with this agreement shall be subject to the non-exclusive jurisdiction of the English courts to which both you and we hereby submit.

## 13. Waiver

A failure by either of us to enforce any one or more of these Terms shall not operate as a waiver of that term or of the right at any time subsequently to enforce that term or any term of this agreement.

## 14. Rights of third parties

Nothing in these Terms is intended to, nor shall it confer any rights on a third party, and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## 15. Data protection

a. In so far as required, both parties agree that they will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

b. The parties acknowledge that for the purposes of the Data Protection Legislation, you, our customer, is the data controller and we are the data processor (where data controller and data processor have the meanings as defined in the Data Protection Legislation).

c. You consent that we may collect and process personal data on your behalf as outlined below.

**Types of personal data** (collected and processed by us in accordance with this agreement and this Clause 15 in particular)

- First name;
- Last name;
- Job title;
- Organisation;
- Email address;
- Telephone number;
- IP address (automatically collected);
- A list of URLs starting with a referring site, data subject's activity on our site, and the site the data subject exits to (automatically collected); and
- Geographic data relating to the data subject's location.
- Demographic information such as post code, preferences and interests;
- Financial information such as credit / debit card numbers;
- Web browser type and version (automatically collected);
- Operating system (automatically collected);

**Categories of data subjects** – as advised and directed by you, including your employees, sub-contractors, customers, suppliers and other parties that may need to register with us in order for you to use our Service.

**Scope, nature and purposes of processing:**

In order to provide the Service to you, including collecting and processing personal data of any of your registered users that you may direct to our registration page; this includes:

- Providing and managing your account;
- Providing and managing access to our site for you and your registered users;
- System administration, analysing aggregate information and auditing the use of our site (when our services log the visitors' IP addresses automatically);
- Personalising and tailoring experience on our site;
- Personalising and tailoring our Service for you;
- Responding to communications from you and your registered users; and
- Analysing your use of our site and gathering feedback to enable us to continually improve our site and your user experience.

With each of your registered user's permission, such as an opt-in option on our registration page, and/or where permitted by law, we may also use their data for marketing purposes which may include contacting your registered users by email, telephone, text message and/or post with information, news and offers on our products and services. We will not, however, send any unsolicited marketing or spam to your registered users and will take all reasonable steps to ensure that we fully protect their rights and comply with our obligations under the GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003, as amended in 2004, 2011 and 2015.

**Duration of the processing** – as long as is necessary for us to provide the Service to you and to comply with our statutory obligations; we will contact you, the data controller, from time to time to ask you to advise us on the length of the time you wish us to keep personal data that we collect and process on your behalf.

d. Without prejudice to the generality of clause 15.a, the 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.

e. We agree that we will process personal data in the following manner in connection with the performance of our Service obligations to you:

- process that personal data only on your written instructions unless are required by the laws of any member of the European Union or by the laws of the European Union applicable to us to process personal data (Applicable Laws). 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 will notify you about that if we are required to do so under the Applicable Laws;
- ensure that we have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of our systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by us);

- ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- not transfer any personal data outside of the European Economic Area unless we obtain your prior written consent and the following conditions are fulfilled:
  - both parties have provided appropriate safeguards in relation to the transfer;
  - the data subject has enforceable rights and effective legal remedies;
  - we have complied with our obligations under the Data Protection Legislation to provide an adequate level of protection to any personal data that is transferred; and
  - we comply with your reasonable instructions notified to us in advance with respect to the processing of the personal data;
  - assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with our obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - notify you without undue delay on becoming aware of a personal data breach;
  - at your written direction delete or return personal data and copies thereof to you on termination of the agreement unless required by Applicable Law to store the personal data; and
  - maintain complete and accurate records and information to demonstrate our compliance with this clause 15.

f. By entering into this agreement you consent to us appointing Host 100 and Microsoft (Office 365 account) as third-party processors of personal data under this agreement. Both Host 100 and Microsoft (Office 365 account) hold data on servers within the EU/ EEA. We confirm that we have entered or (as the case may be) will enter with each of the third-party processors into a written agreement substantially on the third party's processor standard terms of business incorporating terms that are substantially similar to those set out in this clause 15. We will be liable for all acts or omissions of any third-party processor appointed by us.

g. Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

h. Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause or the Data Protection Legislation.

## DEFINITIONS

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|---|--|
| 'Confidentiality Agreement'             | means a confidentiality agreement agreed between you and us.   |
| 'Confidential Information'              | any secret information that either party divulges to the other, and which is clearly indicated to be confidential, or by its very nature is clearly of a commercially sensitive nature. Such information may be in any form including spoken words, price lists, plans, software, documents, recommendations, reports, emails, letters, telephone communication and training documentation or other media incorporating information. |
| 'Data Protection Legislation'           | 'Data Protection Legislation': (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) 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.   |
| 'Intellectual Property Rights' or 'IPR' | any rights including copyright, trade mark, patents, designs, know how or other confidential information whether created in the course of providing the Service or otherwise.  |
| 'Service'                               | individually and collectively: video and audio composition, recording, editing, production, hosting, and streaming services, graphic and website design, and any other services which we may offer from time to time.  |
| 'Terms'                                 | these terms along with any negotiated variations agreed to in writing by us.   |
| 'us', 'we', 'our'                       | Be There Global (UK) Ltd. (company number 05455613) with registered office 8 Roedeer Close, Emsworth, PO10 7GP UK.   |