

///NEO TERMS OF **SERVICE**

These Terms of Service are made effective by and between the Client and the Company (**NEO**/NEO Position, the trading name of Etcetera Etcetera Etcetera Limited Registered in England and Wales (company no. 7167074), located at 1 Fore Street, London EC2Y 9DT) on the date the Company first carries out Services (see 1 Definitions) at the request of the Client.

RECITALS

- (1) NEO is in the business of providing branding, design, creative, marketing, communications, content and related Services to clients.
- (2) The Client wishes to appoint NEO to carry out such services, and NEO is willing to provide these, subject to the provisions of these Terms of Service.

NOW IT IS AGREED as follows:

1 Definitions

In these conditions the following expressions shall have the following meanings:

- 1.1 'This/the Agreement' means these Terms of Service and any schedules and matters referred to in the Estimate or the Brief.
- 1.2 'The Contract' means this Terms of Service Agreement formed by the Client's acceptance of the quotation as set out in the Estimate and any further contracts pursuant to this Agreement.
- 1.3 **'The Client'** means the person, firm or corporation referred to in the Estimate.
- 1.4 'The Company' means NEO/NEO Position, the trading name of Etcetera Etcetera Etcetera Etcetera Limited Registered in England and Wales (company no. 7167074), located at 1 Fore Street, London EC2Y 9DT.
- 1.5 'Parties' means the Company and Client, and 'Party' shall mean either one of them.
- 1.6 **'The Estimate'** means the quotation provided by the Company to the Client.
- 1.7 'Brief' means the Services and/or Work set out in the Estimate or the Brief or agreed in writing.
- 1.8 'Works/Work' means the work carried out and produced in physical or virtual/digital form by the Company pursuant to the Brief see Schedule 1 for an example of the type of Works.
- 1.9 'Services' are any activity reasonably carried out by/on behalf of the Company at the Client's request.



- 1.10 **'Results'** mean any intellectual property, including concepts and material outputs, created, generated or developed in physical or virtual/digital form from the Works.
- 1.11 'Client Content' means any text, corporate images, photographs, illustrations or other content supplied by the Client to the Company.
- 1.12 **'Company's Concept'** means the branding, marketing or design concept formulated by the Company pursuant to the Brief.
- 1.13 **'Company's Content'** means any content originated by the Company pursuant to the Brief.
- 1.14 'Terms of Payment' means the terms and conditions as set out in Clause 11.
- 1.15 'Intellectual Property Rights' means any and all vested contingent and future rights, including any extensions or renewals as far as possible in perpetuity, of copyright, Company right, know-how, patent, registered Company right, service mark, trademark, moral and any other intellectual property rights of any description whatsoever.
- 1.16 **'Territory'** means the world.
- 1.17 **'Personal Data'** refers to the personal information provided to the Company by the Client.
- 1.18 **'Privacy Policy'** refers to the Company's policy on the processing and handling of Personal Data.

2 Interpretation

In this Agreement, unless the context otherwise requires:

- 2.1 words importing any gender include every gender;
- 2.2 words importing the singular number include the plural number and vice versa;
- 2.3 references to numbered clauses and schedules are references to the relevant clause in or schedule to this Agreement;
- 2.4 reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 2.6 the headings to the clauses, schedules and paragraphs of this Agreement are not to affect the interpretation;
- 2.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or by-law made under that enactment;
- 2.8 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.



3. Company's production responsibility

3.1 The Company shall be responsible for the production and delivery of the Work and any Services specified in the Brief to the Client.

The responsibilities of the Company shall include the following:

- 3.1.1 Providing the Client with a written Estimate or quotation along with a response to their request for a proposal. The written Estimate/quotation must be accepted in writing (e.g. email) by the Client prior to commencement of any work.
- 3.1.2 Creation of the Company's Concept including alternative creative proposals set out either in writing or in the form of colour presentation roughs and production of the final Company's Concept and layout of each item presented as colour presentation roughs or in the form of a mock-up website.
- 3.1.3 Unless set out in the Brief, all other matters relating to the commissioning of products and services (e.g. printing) not provided by the Company shall be the responsibility of the Client and its agents, who shall be responsible to ensure payment for the same. Should the Client wish the Company to commission such products/services, these will be charged at the rates and according to the payment terms set out in the Estimate (or agreed in writing).
- 3.1.4 The Company shall consult with the Client on a regular basis throughout the time spent developing the Work by sending drafts to the Client and the Client shall sign these off to indicate satisfaction with the progress made.
- 3.1.5 The Company shall follow the reasonable directions of the Client in respect of the overall tone and direction of the Brief, but it will not be held responsible for any quality issues with the Work arising from the Client Content supplied by the Client for use in the Work if this is not supplied in the format requested by the Company.
- 3.2 The Company shall be responsible for incorporating specific terms and conditions into these Terms of Service or putting in place separate agreements in accordance with these Terms of Service should these be required and making the Client aware of these. Specifically:
 - 3.2.1 PR services provided by the Company shall be subject to the terms and conditions for a consultancy/client relationship provided by the Chartered Institute of Public Relations prevailing at the time and which shall be incorporated into this agreement to the full extent allowable by law.
 - 3.2.2 Website development, hosting, search engine optimisation and domain registering services will be subject to a separate agreement.



3.2.3 Database management for the purposes of emailing marketing will be subject to a separate agreement that clearly defines the responsibilities of the Company and the Client in relation to the processing of personal information/data in accordance with the EU General Data Protection Regulation (GDPR).

4. Proof correction and artwork

- 4.1 The Client shall be forwarded by the Company finished artwork in electronic format for amendment/approval prior to final files being provided and/or sent to print. The Client undertakes to read, check and correct the proofs of the artwork and return them to the Company within the period of time that has been mutually agreed, failing which the Company shall consider the proofs duly approved, and on such approval the Company shall have no liability as to typographical mistakes subsequently discovered.
- 4.2 Costs of all corrections and alterations made by the Company to the finished artwork and the proofs in excess of amendments made to the proofs supplied in accordance with Clause 4.1 shall be borne by the Client.

5. Ownership, proprietary rights and licences

- 5.1 The Client shall own all right, title, and interest in and to the Client Content.
 Subject to Clause 5.2, the Company shall own all right, title and interest in and to the Company's Content and the Company's Concept.
- 5.2 On full payment of any sums due as set out in the Estimate all right, title and interest in and to the final Work shall pass to the Client.
- 5.3 For clarity, the Company retains all right, title and interest in and to any concepts, designs or otherwise created pursuant to the Brief but not utilised in the final Work.
- Nothing in this Agreement shall be so construed as to require the Company to assign to the Client any rights whatsoever in relation to such ideas, know-how, methodologies, expertise and techniques developed by the Company whether prior to or in the course of the performance of this Agreement or which together constitute the expertise which the Company brings to bear on the performance of its obligations under this Agreement.
- 5.5 The Client shall advise the Company of the quotation or inclusion in the Work of any textual or illustrative material from any source other than itself and the Client shall ensure that written permission has been secured from and fees paid to the copyright holders for the inclusion of such material. The Client will advise if appropriate



- acknowledgement is needed in the Work, and the Company shall include such acknowledgement in the Work.
- 5.6 The Client agrees to allow the Company to place websites and other designs, along with a link to the Client's site on its website for demonstration purposes and to use any designs in the Company's own publicity and portfolios.

6 Data privacy and the Company's Privacy Policy

- 6.1 Personal Data provided by the Client (this may include your name, job title, company/employer, postal address, telephone number and email address) to the Company will be processed/handled and made accessible to the Client in accordance with the Company's Privacy Policy published on the Company's website.
- 6.2 This Privacy Policy describes the purposes for which the Company collects and uses Personal data: to provide its Work/Services; to enable proper business administration and record-keeping; to respond to the Client's requests and enquiries; to market appropriate services to the Client (the Company will only do this with the Client's explicit consent: if the Client has proactively opted-in to receiving such communications from the Company); to obtain feedback on the Work/Services the Company provides to the Client; to comply with applicable law(s); to, where necessary, obtain or maintain insurance coverage, manage risk, or obtain professional advice; to monitor website usage and improve our website (applicable when the Client visits/uses the Company's website or uses its online enquiry form).
- 6.3 This Privacy Policy also details the legal bases on which the Company processes Personal Data: when it is necessary to comply with a legal obligation; where such processing is necessary in order to carry out or enter into this Contract with the Client; legitimate interests, whereby it would be reasonable for the Client to expect the Company to process their Personal Data for the purposes of providing and enhancing the provision of its Work/Services, and operating best practice to mitigate any risk to the Client, the Company or any other parties.
- 6.4 The Company shall not keep Personal Data for longer than is necessary to fulfil the purposes outlined above and in its Privacy Policy. The exception being that it may retain Personal Data where such retention is necessary for compliance with a legal obligation to which it is subject, or in order to protect the Client's vital interests or the vital interests of another party.
- 6.5 The Client has the following rights in relation to their data under the EU GDPR: the right to be informed, right of access, right to erasure, right to restrict processing, right to data portability, right to object, right to withdraw consent, the right to not be subject to any decision based solely on automated processing of their Personal Data.



- Data to third parties from time to time under the following circumstances: the Client requests or authorises the disclosure of their Personal Data to a third party; the Client's Personal Data is disclosed as permitted by applicable law and/or in order to comply with, for example, a court order; the Client's Personal Data is provided to the Company's agents, partners or suppliers/service providers who perform functions on its behalf. In this instance, the Company requires that its third-party service providers only use the Client's Personal Data as necessary to provide the requested Work/Services and that they comply with its Privacy Policy.
- 6.7 The Company may update its Privacy Policy from time to time. The most up-to-date version will always be posted on the Company's website and display the date it was published. It is the Client's responsibility to review the Company Privacy Policy and ensure it meets with their satisfaction.

7. Confidentiality

- 7.1 The Company acknowledges that during the course of this Agreement it will be entrusted with, and further develop, confidential information relating to the business of the Client. The Company agrees that it will not use such confidential information for any purpose except the performance of this Agreement, other than as required by law.
- 7.2 The Company will not disclose this information to anyone except, as necessary, to its agents, partners or suppliers/service providers who perform functions on its behalf and who are bound by the same terms regarding confidentiality outlined in Clause 7.1 and who are prohibited from disclosing confidential information to any other party, other than as required by law.
- 7.3 The foregoing obligation of confidentiality will not apply to information that: (i) is or becomes generally known or available by publication or otherwise through no fault of the Company: (ii) is known by the Company prior to the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the Company pursuant to this Agreement; (iv) is lawfully obtained from a third party, including enduser customers, who have the right to make such disclosure without restriction; or (v) is released for publication by the Client in writing.

8 Storage, naming, security and retrieval of digital and hardcopy files

8.1 The Company shall take appropriate technical precautions to preserve their work records and secure any and all files/information made available to it by the Client by, for example, using best practice with regards to file-naming protocols and maintaining



- a record of versions; password protecting personal computers and mobile devices; not using public networks to share confidential information or Personal Data online; and ensuring any hardcopy records are kept under lock and key.
- 8.2 The Company shall backup any and all digital files containing content and concepts it creates pursuant to the Brief to a separate secure server and/or hard drive and/or password protected cloud-based storage system.
- 8.3 The Company requires that its third-party service providers adhere to the same terms outlined in Clause 8.1 and 8.2, and that they make copies of all digital files containing content and concepts that they have created, generated or developed for the Company and the Client in the past 24 hours available to the Company at the close of each working day to enable it to maintain its own records and backup systems.
- 8.4 The Company nor its third-party service providers shall keep confidential information or Personal Data provided to it by the Client for longer than is necessary to provide the requested Works/Services.
- 8.5 The Company's security practices/processes/technology do not guarantee absolute security of the Client's information. The Company does not accept responsibility for the security of information the Client chooses to share with it over the internet or any devices it may use to share this information, and the Client should take all normal precautions such as, but not limited to, closing browsers and not using public networks (e.g., internet cafes, etc.) when sharing confidential information and Personal Data online.

9. Warranties and indemnities

- 9.1 The Company hereby warrants to the Client that:
 - 9.1.1 The Company has the right and power to enter into this Agreement.
 - 9.1.2 It is skilled and experienced delivering the Work/Services outlined in the Brief. The Company acknowledges that the Client is relying upon the skill and expertise of the Company for the performance of this Agreement and the Company warrants that it will perform in a good and workmanlike manner to deliver the Work/Services described in the Brief.
 - 9.1.3 Save for any copy supplied by the Client or the Client's contributors, the Company's part in the Work will in no way give rise to a violation of any existing copyright or a breach of any existing agreement.
 - 9.1.4 Save for any copy supplied by the Client or the Client's contributors, the Company's part in the Work will contain nothing obscene, defamatory or libellous and all statements contained therein purporting to be facts will be true.



- 9.2 The Company will indemnify the Client against any loss, injury or damage (including any legal costs or expenses and any compensation costs or disbursements paid by the Client on the advice of the Client's legal advisers to compromise or settle any claim) arising out of any breach or alleged breach of the foregoing warranties.
- 9.3 The Client hereby warrants to the Company that:
 - 8.3.1 The Client has the right and power to enter into this Agreement.
 - 8.3.2 The Client's part in the Work will in no way give rise to a violation of any existing copyright or a breach of any existing agreement.
 - 8.3.3 The Client's part in the Work will contain nothing obscene, defamatory or libellous and all statements contained therein purporting to be facts will be true.
- 9.4 The Client will indemnify the Company or its agents against any loss, injury or damage (including any legal costs or expenses and any compensation costs or disbursements paid by the Company or its agents on the advice of the Company's legal advisers to compromise or settle any claim) arising out of any breach or alleged breach of the foregoing warranties.
- 9.5 The foregoing warranties and indemnity shall survive the termination of this Agreement.
- 9.6 DISCLAIMER. SAVE IN RESPECT OF THE WARRANTIES CONTAINED IN CLAUSE 9, THE FOREGOING ARE THE ONLY WARRANTIES MADE BY EITHER PARTY. BOTH PARTIES SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Limitation of liability

- 10.1 The liability of the Company to the Client shall be limited to direct damages and shall not in any circumstance exceed the amount of the total fees paid in respect of the Brief by the Client to the Company during the term of this Agreement. The Company will not be liable for incidental, special, or consequential damages including lost profits or lost business suffered by the Client, even if it has previously been advised of the possibility of such damages. For the avoidance of doubt, prior to any claim being made, the Company will be given full access and opportunity to rectify any wrong that may have been committed.
- 10.2 Whilst all reasonable care will be taken with material supplied by the Client, the Company cannot be held liable whether in negligence or otherwise for the loss of any such material and backup copies of the same will be held by the Client.



10.3 No third-party shall have any rights under or in connection with this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

11. Terms of payment to the Company

The Client shall pay the Company for the Services/Work to be performed under this Agreement according to the Estimate or agreed in writing.

- 11.1 In the event that the Work is not completed within three months of the acceptance of the Estimate by the Client or within the agreed project timeline if this extends beyond three months, for whatever reasons other than default by the Company, then the Company reserves the right to submit invoices for any work done to cover all costs and other items as the relevant proportion of its fee and such invoices must be paid within 14 days of the date thereof.
- Unless set out in the Estimate or agreed in writing, all other matters relating to the commissioning of products and services (e.g. printing) not provided by the Company, shall be the responsibility of the Client and its agents, who shall be responsible to ensure payment for the same. If the Client wishes the Company to commission such products/services, then these will be charged at the rates and according to the payment terms set out in the Estimate or agreed in writing.
- 11.3 The Company reserves the right, on giving reasonable notice (not being less than 30 days) to the Client, to increase the price of the Services/Work pursuant thereto to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation or alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, printing or paper), any change in delivery dates, quantities or specifications for the Work which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information, instructions, or copy for insertion.
- 11.4 Except as otherwise stated under the terms of any quotation or unless otherwise agreed in writing between the Client and the Company, all prices given by the Company are on an ex works basis, and where the Company agrees to deliver the Work otherwise than to the Client's premises as referred to, the Client shall be liable to pay the Company's charges for transport, packaging and insurance.
- 11.5 The price is exclusive of any applicable value added tax or other relevant sales tax, which the Client shall be additionally liable to pay to the Company.
- 11.6 The Company shall be entitled to recover the price, notwithstanding that delivery may have taken place late in respect of the same. The time of payment of the price shall



- be of the essence of the terms of any quotation. Receipts for payment will be issued only upon request.
- 11.7 If the Client fails to make any payment on or before the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 11.7.1 cancel the Contract formed by the Client's acceptance of the quotation as set out in the Estimate (or agreed in writing) or suspend any further deliveries to the Client:
 - 11.7.2 appropriate any payment made by the Client in respect of the Work/Services as the Company may think fit (notwithstanding any purported appropriation by the Client); and
 - 11.7.3 charge the Client interest (both before and after any judgement) on the amount unpaid, at the rate of four (4) per cent per annum above Barclays Bank Plc base rate, compounded quarterly, from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

12. Delivery

- 12.1 The Company agrees to have ready for printing or otherwise by the date referred to in the Brief (or subsequently agreed in writing) those items referred to in such Brief (or subsequently agreed in writing).
- 12.2 Delivery of the Work shall be made by the Company or its agents delivering the Work to the Client's premises at any time after the Company has notified the Client that the Work is ready for delivery or, if some other place for delivery is agreed by the Company, by the Company delivering the Work to that place.
- 12.3 Any dates quoted for delivery of the Work are approximate only and the Company shall not be liable for any delay in delivery of the Work however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Work may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Client.
- 12.4 Where the Work is to be delivered in instalments (and for the purposes of this Contract each delivery in respect of any element of the Work shall be deemed to be an instalment), each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms of Service or any claim by the Client in respect of any one or more instalments shall not entitle the Client to treat the Contract as a whole as repudiated.



12.5 If the Client fails to take delivery of the Work or fails to give the Company or its agents adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Client's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may store the Work until actual delivery and charge the Client for the reasonable costs (including insurance) of storage.

13. Risk and property

Risk of damage to or loss of the Work shall pass to the Client at the time of delivery or, if the Client wrongfully fails to take delivery of the Work, the time when the Company or its agents has tendered delivery of the Work.

14. Termination of contract

- 14.1 Either Party may in writing to the other terminate this Agreement on two (2) months' notice.
- 14.2 Save in respect of an event of force majeure, the Client or the Company may terminate this Agreement by summary notice in writing to the other if the Company or the Client is in material breach of any of the provisions of this Agreement and has failed to remedy such breach within 21 days of notice in writing to them from the other of such breach.
- 14.3 This Agreement shall terminate on immediate written notice if and when a manager, receiver, or other encumbrancer takes possession of, or is appointed over the whole or any substantial part of, the Client's or the Company's assets; or if and when the Client or the Company enters into any arrangement or composition with or for the benefit of their creditors (including any voluntary arrangement under the Insolvency Act 1986); or if and when a petition is presented or a meeting is convened for the purpose of considering a resolution for the making of an administration order, the winding up or dissolution of the Client or the Company (otherwise than a voluntary liquidation for the purposes of reconstruction).
- 14.4 Upon termination of this Agreement under Clause 14.1, 14.2 or 14.3 hereof, all rights of the Client in the Client Content shall revert to the Client, but any licence granted by the Company in the Work shall, if any sums remain outstanding, revert to the Company without prejudice to any claim which the Company may have for monies due and/or damages and/or otherwise.
- 14.5 Nothing herein before contained shall prejudice any claim or demand which any Party hereto may have against the other under the provisions hereof or in respect of any



- antecedent breach of such provision or by reason of the determination of this Agreement.
- 14.6 If the Client for any reason terminates this Agreement, then the Company reserves the right to charge for the Work completed/Services delivered as of the date of such notice, including pro-rated fees and expenses for items partially complete at the time of termination, such invoices to be paid within fourteen (14) days of the date of the invoice. If the Client fails to make payment on or before the due date, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to the benefit of Clause 11.7.3 of this Agreement. Upon receipt of all sums due to the Company, the Company will deliver to the Client copies of the Work on any specific matter completed to that date. Intellectual Property Rights in this uncompleted work will be dealt with, on full payment of sums owing, as per Clause 5 of this Agreement.

15. Force majeure

If the Company shall be delayed in or prevented from delivering the Work/Services or if the Company shall be delayed or prevented from performing its obligations in accordance with this Agreement by reason of any act, delay or omission caused by circumstances beyond its control including without limitation strikes, lock-outs, labour disputes, labour shortages, accident, fire, explosion or inability to obtain materials, facilities, equipment or power, then in any such event the Company shall not be liable to the other for such delay or failure, nor shall it give rise to a breach of this Agreement.

16. Waiver of remedies

No forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party and each such right, power or remedy shall be cumulative.

17. Severability

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the remainder (if any) of such provision and the other provisions of this Agreement shall remain in full force and effect.

18. Notices



Any notice required or desired to be given under this Agreement shall be in writing and shall be deemed to have been duly served if delivered or sent by email or pre-paid first class post correctly addressed to the relevant Party at the Party's address given in this Agreement or such other address that has been notified by the Party to the other from time to time and any notice so given shall be deemed to have been given at the time of receipt.

19. No partnership

Nothing herein contained or to be done hereunder shall be deemed to constitute a partnership between the Parties hereto and none of them shall do or cause to be done anything whereby it shall or it may be represented that it is a part of the others.

20. Entire agreement

This Agreement contains the entire understanding between the Parties with regard to the development, production and distribution of the Work and supersedes all previous agreements, undertakings, warranties (save as referred to herein) whether written or oral and any amendment hereto shall only be valid if in writing signed by the Parties.

21. Assignment

This Agreement and the rights and obligations hereunder may not be assigned in whole or in part by either Party without the prior written consent of the other Party, and any purported assignment without such written consent shall be void and of no effect.

22. Governing law

This Agreement shall be deemed to be a contract made in England and shall be construed and applied in all respects in accordance with English law and the Parties hereby submit to the non-exclusive jurisdiction of the English Courts.

Contact information:

NEO/NEO Position 1 Fore Street London EC2Y 9DT

+44 (0)20 3872 3052 info@neoposition.com



///SCHEDULE 1 'WORKS'

Works may include, but may not be limited to:

Branding

- Brand strategy and development
- Brand identity and (graphic) design
- Consultancy
- Brand research/audits
- Training

Design/Creative

- · Brand identity and (graphic) design
- Brand collateral and marketing materials (e.g. print newsletters, clients/employee communications, brochures, flyers, ads, etc. and digital creative)
- Content creation (written/visual/video/animation/digital)
- · Website design and delivery
- Infographics and report design

Marketing

- · Website design and delivery
- Brand collateral and marketing materials
- · Campaign and budget management
- PR/media relations
- Digital/Social marketing
- Content creation (written/visual)
- · Content management/publishing

Content

- Content creation (written/visual)
- Infographics and report design
- Video
- Music