

Koi Sports Bid-Writing Services  
Terms & Conditions (January 2020)

**1. Services to be rendered**

**1.1** Bid Writing Services to deliver the agreed level of Investment for this project is to be sourced exclusively by the Contractor, in partnership with the Client.

**2. Fees**

**2.1** Please refer to your “Proposal” Document for details

**3. Estimates**

**3.1** Fee’s for our services are “fixed” on a job by job basis.

**4. Invoices and Payment**

**4.1** All invoices are payable by the due date stated on the signed “Proposal”, usually being within 30 days of date of invoice; we will exercise our statutory right to claim interest and compensation for debt recovery costs under late payment legislation if we’re not paid according to these terms.

**5. Changes**

**5.1** Changes to the signed “Proposal” can only be made with the written permission of both parties.

**6. Expenses**

Project costs and expenses are covered internally, except as listed below:

**6.1** Any activity relating to this project that requires travel will be charged at £0.45 per mile.

**7. When the agreement starts and the Duration**

**7.1** This agreement shall commence upon receipt of the signed “Proposal” and shall continue for a maximum period of 52 Weeks; each “job” carries a different timescale based upon the nature of each funder(s), therefore exact dates cannot be given.

**8. Ownership**

**8.1** Under the terms of this agreement any existing Copyrights and/or Trademarks will remain the property of the owners.

**8.2** Under the terms of this agreement the Client grants the Contractor usage rights of Logo’s and associated Media for sales and marketing purposes.

## 9. Modifications

Modifications of the terms of this contract must be written and authorised by both parties. This will involve agreeing a new version of the entire "contract" and finalising it in the manner described below in "Acceptance of terms".

## 10. Confidentiality

**10.1** You shall inform us in writing before the project commences if any portion of any material or information provided by you or if any portion of the project is confidential. Any information identified and agreed as confidential shall not be used or disclosed, other than during the continuance of this agreement and in connection with the provision of the agreed services. This obligation will cease to apply if the relevant information ceases to be confidential, for example because it has entered the public domain.

## 11. Limitation of our Liability

**11.1** Although every effort will be made to raise the agreed level of investment required, under the terms of this agreement the Contractor will not be held liable for any shortfall in funds raised and will still be entitled to deduct its fees from investment made to, or on behalf of, the Client.

**11.2** We will not be liable for any incidental or consequential damage that arises from our failure to perform any aspect of the project in a timely manner, regardless of whether such failure was caused by intentional or negligent acts or omissions by us, any client representatives or employees, or a third party.

**11.3** We acknowledge that nothing in these terms excludes or limits our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by the laws of England and Wales.

## 12. Status

**12.1** Nothing in this agreement shall render or be deemed to render us an employee or agent of your business. This agreement does not create any mutuality of obligation between us for these purposes.

## 13. Data Protection

**13.1** Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

**13.2** The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation. Schedule 1 details the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject (both as defined in the Data Protection Legislation)).

**13.3** Without prejudice to the generality of Clause 13.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement.

**13.4** Without prejudice to the generality of Clause 13.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

- (a) Process that Personal Data only on the written instructions of the Client unless the Contractor is required by Applicable Laws to otherwise process that Personal Data. Where the Contractor is relying on the laws of a member of the European Union or European Union Law as the basis for processing Personal Data, the Contractor shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Client;
- (b) Ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 its 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 it);
- (c) Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) Not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - (i) The Client or the Contractor has provided appropriate safeguards in relation to the transfer;
  - (ii) The data subject has enforceable rights and effective legal remedies;
  - (iii) The Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (e) Assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) Notify the Client without undue delay on becoming aware of a Personal Data breach;
- (g) At the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

- (h) Maintain complete and accurate records and information to demonstrate its compliance with this Clause 13 [and allow for audits by the Client or the Client's designated auditor].

**13.5** The Client does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement. The Contractor confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement [SUBSTANTIALLY ON THAT THIRD PARTY'S STANDARD TERMS OF BUSINESS OR INCORPORATING TERMS WHICH ARE SUBSTANTIALLY SIMILAR TO THOSE SET OUT IN THIS CLAUSE 13]. As between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 13].

**13.6** Either party may, at any time on not less than 30 days' notice, revise this Clause 13 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).

#### **14. Events beyond control**

**14.1** If we are prevented or delayed in the performance of any of our obligations under this agreement by events beyond our control (also known as "force majeure") including but not limited to fire, explosion, storm, flood, bad weather or other natural physical disaster, then we'll be excused the performance for so long as such cause of prevention or delay continues.

#### **15. Termination**

**15.1** Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice if:

- (a) The other party commits a material breach of any (other) term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified (in writing) to do so;
- (b) The other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (c) The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) The other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (e) A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (f) An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (g) The holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) A person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (i) A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) Any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 15.1(c) to Clause 15.1(i) (inclusive); or
- (k) The other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

**15.2** For the purposes of Clause 15.1(a) material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derived from:

- (a) A substantial portion of this agreement
- (b) Any of the obligations set out in clauses, over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**15.3** Without affecting any other right or remedy available to it, the Contractor may terminate this agreement with immediate effect by giving written notice to the Client if

- (a) There is a change of control of the Client.

## **16. Consequences after termination**

**16.1** The termination of this agreement howsoever occurring shall not affect the rights and liabilities of the parties already accrued at such time nor affect the continuance in force of such of its provisions as are expressed as or capable of having effect after such termination.

(a) The Client shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt;

(b) The Client shall, within 7 days, return all of the Contractor's Equipment. If the Client fails to do so, then the Contractor may enter the Client's premises and take possession of the Contractor's Equipment. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;

(c) The Contractor shall on request return any of the Client Materials not used up in the provision of the Services; and



**16.2** Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

#### **17. Unenforceable terms**

If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this agreement shall continue in full force and effect as if this agreement had been executed with the illegal or unenforceable provision eliminated.

#### **18. Dispute Resolution**

Any dispute with a value that exceeds the maximum limit for small-claims in the County Court of England and Wales, arising out of this agreement, shall be submitted to binding arbitration before a mutually agreed-upon arbitrator. The arbitrator's award shall be final, and judgment may be entered in any court having jurisdiction thereof. If for any reason, notwithstanding this agreement, the matter proceeds to a court, the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

#### **19. Acceptance of terms**

We, as contractor and sender and you, as client and recipient, will acknowledge acceptance of these terms either through an e-mail noting acceptance or acceptance is acknowledged at the beginning of any work on the project. Electronic signatures shall be considered legal and binding.

### **SCHEDULE 5**

#### **PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

##### **1. PROCESSING BY THE CONTRACTOR**

###### **1.1 SCOPE**

Directors and Staff

###### **1.2 NATURE**

CRM System

###### **1.3 THE PURPOSE OF PROCESSING**

For communication and record keeping

###### **1.4 DURATION OF THE PROCESSING**

The term of this contract



## 2. TYPES OF PERSONAL DATA

### 2.1. CATEGORIES OF DATA SUBJECT

Any personal data required to complete the Feasibility Study