

# DISPUTE RESOLUTION OMBUDSMAN

## STANDARD TERMS & CONDITIONS

### 1. INTERPRETATION

#### 1.1 **Definitions.** In these Conditions, the following definitions apply:

**Application:** the Member's application for full membership as set out in the Member's Application Form overleaf.

**Application Form:** the application form signed by the Client.

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Charges:** the charges payable by the Member for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.3.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.7.

**Contract:** the contract between Dispute Resolution Ombudsman and the Member for the supply of Services in accordance with these Conditions and the Rules.

**Dispute Resolution Ombudsman:** A company registered in England and Wales with company number 08945616.?

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), to the extent that any AI-Generated Content constitutes or includes protectable intellectual property rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Member:** the person or firm who purchases Services from Dispute Resolution Ombudsman.

**Renewal:** the renewal form sent by Dispute Resolution Ombudsman to the Member in accordance with these Conditions.

**Rules:** the rules of membership set out at Schedule 1 and incorporating the Dispute Resolution Ombudsman Rules of Full Membership, Code of Practice and the Rules Governing the Ombudsman's Alternative Dispute Resolution Service.

**Services:** the services supplied by Dispute Resolution Ombudsman to the Member as described in the Rules.

**Term:** Unless agreed by exception, a full term of membership of Dispute Resolution Ombudsman shall last for 12 months from 1 January until 31 December inclusive.

#### 1.2 **Construction.** In these Conditions and the Rules, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

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- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

#### 2. BASIS OF CONTRACT

- 2.1 The Application constitutes an offer by the Member to purchase Services in accordance with these Conditions.
- 2.2 Each Renewal constitutes an offer by the Member to continue to purchase Services in accordance with these Conditions.
- 2.3 The Application shall only be deemed to be accepted when Dispute Resolution Ombudsman issues written acceptance of the Application at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 From the Commencement Date until the expiry of the then current Term, the Member will become a full member of Dispute Resolution Ombudsman, providing there is no early termination for any reason set out in this Contract.

Where the Commencement Date is part-way through the Term, where membership commences in Quarter One or Quarter Two of any given year, the Term and any associated fee shall be applied from the date membership commences to 31 December in that given year, Where the Commencement date is in Quarter Three or Quarter Four of any given year, the Term and associated fee shall be dealt with cumulatively from the date the membership commences to the 31 December in that year plus the next immediately successive full Term.

- 2.5 Not later than 4 weeks before expiry of each Term, Dispute Resolution Ombudsman will send to the Member a Renewal in a form determined by Dispute Resolution Ombudsman. The Member will either promptly complete the Renewal and make any payment due in accordance with the Renewal, and return the Renewal to Dispute Resolution Ombudsman in accordance with the instructions printed on it, or (if it does not wish to remain a Member) give notice of cessation of membership in accordance with clause 9.1.
- 2.6 For the avoidance of doubt if the Member does not either give notice of termination in accordance with clause 9.1 or issue a Renewal in accordance with clause 2.5, the Member will nonetheless remain a Member and will accordingly be bound by the Agreement and the Rules, and remain liable for the Charges, but subject to clause 2.7.

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- 2.7 Dispute Resolution Ombudsman may at its discretion reject a Renewal or determine that a Member who has not issued a Renewal will cease to be a Member on such date as Dispute Resolution Ombudsman determines.
- 2.8 From the Commencement Date, Dispute Resolution Ombudsman shall have jurisdiction to investigate complaints and disputes, without the prior need for consent from the Member, in respect of the goods and services supplied by the Member in the usual course of its business or that the Dispute Resolution Ombudsman has agreed with the Member to cover within the scope of their membership.
- 2.9 The Contract with the Rules constitutes the entire agreement between the parties to the exclusion of any other terms that the Member seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3. SUPPLY OF SERVICES**

- 3.1 Dispute Resolution Ombudsman shall supply the Services to the Member in accordance with the Rules in all material respects.
- 3.2 Dispute Resolution Ombudsman shall use all reasonable endeavours to meet any timescales set out in the Rules, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Dispute Resolution Ombudsman shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Dispute Resolution Ombudsman shall notify the Member in any such event.
- 3.4 Dispute Resolution Ombudsman warrants to the Member that the Services will be provided using reasonable care and skill.
- 3.5 For the avoidance of doubt, bodies which are admitted as members in accordance with the rules and the Conditions are entitled to the rights and subject to the obligations set out in the Rules and the Conditions but are not members (guarantors) of Dispute Resolution Ombudsman under its articles of association.

### **4. MEMBER'S OBLIGATIONS**

- 4.1 The Member shall:
- (a) ensure that the terms of the Application and any Renewal and all other information which it provides under the Contract or the Rules are complete and accurate;
  - (b) co-operate with Dispute Resolution Ombudsman in all matters relating to the Services;
  - (c) provide Dispute Resolution Ombudsman with such information and materials as Dispute Resolution Ombudsman may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and

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- (d) promote the aims and objectives of Dispute Resolution Ombudsman and comply with all obligations detailed in these Conditions, the Application, each Renewal and the Rules.
- (e) Indemnify and keep safe from harm Dispute Resolution Ombudsman from claims from any of its customers or third parties whatsoever relating to Dispute Resolution Ombudsman's provision of the Services,

4.2 If Dispute Resolution Ombudsman's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Member or failure by the Member to perform any relevant obligation (**Member Default**):

- (a) Dispute Resolution Ombudsman shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Member remedies the Member Default;
- (b) Dispute Resolution Ombudsman shall be relieved from the performance of any of its obligations to the extent the Member Default prevents or delays Dispute Resolution Ombudsman's performance of any of its obligations;
- (c) Dispute Resolution Ombudsman shall not be liable for any costs or losses sustained or incurred by the Member arising directly or indirectly from Dispute Resolution Ombudsman's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (d) the Member shall reimburse Dispute Resolution Ombudsman on written demand for any costs or losses sustained or incurred by Dispute Resolution Ombudsman arising directly or indirectly from the Member Default.

## 5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be calculated in accordance with the Application Form or each Renewal and the Rules and Schedule of Fees.

5.2 Following the expiration of the Term and on each subsequent anniversary, the Charge will increase by not less than the mean average of Retail Price Index ("RPI") Consumer Price Inflation ("CPI"), such figures to be taken on 1 November each year and commencing on the expiration of the Term, including any period of Pro Rata Term.

5.3 The Member will pay the Charges for each Term and, if applicable and period of Pro Rata Term, in advance in accordance with the instructions printed on the Application or Renewal.

5.4 The Member shall pay the Charges in full and in cleared funds to a bank account nominated in writing by Dispute Resolution Ombudsman.

5.5 Time for payment shall be of the essence of the Contract.

5.6 All amounts payable by the Member under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Dispute Resolution Ombudsman to the Member, the

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Member shall, on receipt of a valid VAT invoice from Dispute Resolution Ombudsman, pay to Dispute Resolution Ombudsman such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment of the Charges is due.

- 5.7 If the Member fails to make any payment due to Dispute Resolution Ombudsman under the Contract by the due date for payment, then the Member shall pay interest on the overdue amount at the rate of 4% per cent per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Member shall pay the interest together with the overdue amount.
- 5.8 The Member shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Dispute Resolution Ombudsman may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Member against any amount payable by Dispute Resolution Ombudsman to the Member.
- 5.9 For the avoidance of doubt no refund of Charges is due to the Member if for any reason its membership ends during a Term.

#### **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Dispute Resolution Ombudsman.
- 6.2 All Dispute Resolution Ombudsman Materials are the exclusive property of Dispute Resolution Ombudsman.
- 6.3 Subject to clause 6.4 each Party grants to the other a non-exclusive, royalty-free, revocable licence during the Term to use its name and logo solely for the purpose of identifying the Parties' relationship in marketing, promotional, and consumer-facing materials (including websites, presentations, and proposals), provided that such use is in accordance with the brand guidelines notified by the owning Party from time to time.
- 6.4 Neither Party shall do anything which may damage or bring into disrepute the goodwill, reputation, or brand of the other Party. Each Party may require the other to cease any use of its name or logo which it reasonably considers to be misleading, inaccurate, or inappropriate.

#### **7. CONFIDENTIALITY**

- 7.1 Each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to that party by the other party, its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this

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clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

- 7.2 Dispute Resolution Ombudsman reserves the right to publish case data or case studies in its Annual Review, in other documents and on its website. In such cases the identity of the Member and consumer will be withheld unless prior written consent from both parties is obtained.

#### **8. LIMITATION OF LIABILITY**

- 8.1 Nothing in these Conditions shall limit or exclude Dispute Resolution Ombudsman 's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

- 8.2 Subject to clause 8.1:

- (a) Dispute Resolution Ombudsman shall under no circumstances whatever be liable to the Member, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, special or consequential loss or damage arising under or in connection with the Contract; and
- (b) Dispute Resolution Ombudsman 's total liability to the Member in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £10,000.

- 8.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 8.4 This clause 8 shall survive termination of the Contract.

#### **9. TERMINATION**

- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract and thereby terminate the Member's membership of Dispute Resolution Ombudsman by giving the other party one month's written notice such notice to expire at the end of a Term.

- 9.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

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- (a) the other party commits a material breach of any term of the Rules or of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) 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 (being a company or liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) 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 its creditors other than (where 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;
- (d) 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;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) 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 its assets and such attachment or process is not discharged within 14 days;
- (g) 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);
- (h) 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;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (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 9.2(b) to clause 9.2(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in Dispute Resolution Ombudsman's opinion the Member's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

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- (n) If a Member, or any of its directors, employees or agents become aware of or take any action that may bring commercial or reputational risk to Dispute Resolution Ombudsman they will take any corrective action required, as to which time will be of the essence. Notwithstanding any other remedy available to it under this Agreement, Dispute Resolution Ombudsman will retain the right to terminate membership of the Member immediately if it considers that it is complicit in any such action.

9.3 Without limiting its other rights or remedies, Dispute Resolution Ombudsman may terminate the Contract with immediate effect by giving written notice to the Member if the Member fails to pay any amount due under this Contract on the due date for payment or if Dispute Resolution Ombudsman determines not to admit a Member or to renew its membership, in accordance with clause 2 or in the cases stated in the Rules.

9.4 Without limiting its other rights or remedies, Dispute Resolution Ombudsman may suspend provision of the Services under the Contract or any other contract between the Member and Dispute Resolution Ombudsman if the Member becomes subject to any of the events listed in clause 9.2(b)) to clause 9.2(m), or Dispute Resolution Ombudsman reasonably believes that the Member is about to become subject to any of them, or if the Member fails to pay any amount due under this Contract on the due date for payment, or in any of the cases stated in the Rules.

#### 10. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Member shall immediately pay to Dispute Resolution Ombudsman all of Dispute Resolution Ombudsman 's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Dispute Resolution Ombudsman shall submit an invoice, which shall be payable by the Member immediately on receipt;
- (b) the Member shall discontinue the use of any material which is related to Dispute Resolution Ombudsman, its logo or any other reference to membership which shall, for the avoidance of doubt, include Dispute Resolutions Ombudsman's case management system, or any other software to which licences have been provided and Dispute Resolution Ombudsman shall suspend usage of such equipment with immediate effect.
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect; and
- (e) provision of the Rules which relate to former Members will continue to apply.
- (f) No refunds or rebates for any sums relating to the unexpired portion of the term will become due to a Member and all unpaid sums shall immediately become due in accordance with Clause 10 (a) as to the payment of which time shall be of the essence.

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#### 11. FORCE MAJEURE

- 11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Dispute Resolution Ombudsman including but not to strikes, lock-outs or other industrial disputes (whether involving the workforce of Dispute Resolution Ombudsman or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Dispute Resolution Ombudsman or subcontractors.
- 11.2 Dispute Resolution Ombudsman shall not be liable to the Member as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents Dispute Resolution Ombudsman from providing any of the Services for more than 4 weeks, Dispute Resolution Ombudsman shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Member.

#### 12. GENERAL

##### 12.1 Assignment and other dealings.

- (a) Dispute Resolution Ombudsman may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Member shall not, without the prior written consent of Dispute Resolution Ombudsman, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

##### 12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

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#### 12.3 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

12.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.7 **Variation.** Without prejudice to the power of variation of Rules contained in Rule 29, Dispute Resolution Ombudsman may from time to time vary the Conditions or the Charges for the succeeding Term by giving not less than 4 weeks' notice of that change to all Members. Any change to the Charges will be set out in the Renewal. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Dispute Resolution Ombudsman.

12.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

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**SCHEDULE 1**

**Dispute Resolution Ombudsman Rules of Full Membership**