

**DATED**

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**TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

**THIS AGREEMENT** is dated [DATE]

## **AGREED TERMS**

### **1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

**Contract:** the Customer's purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Services by the Supplier under condition 2.2.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Deliverables:** all Documents, products and materials developed by the Supplier in relation to the Services in any form, including but not limited to any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**In-put Material:** all Documents, information and materials provided by the Customer relating to the Services.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre Existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract.

**Services:** the services to be provided by the Supplier under the Contract as set out in Schedule 1.

**Supplier:** Andrew Wilcock Design Solutions Limited, (Company Number 07194329) whose registered office is at 17 George Street, St Helens, Merseyside, WA10 1DB.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of the Contract.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.7 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.8 References to conditions and schedules are to the conditions and schedules of the Contract.

## **2. APPLICATION OF CONDITIONS**

- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued by the Supplier; or
  - (b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Notwithstanding condition 2.2, these Conditions shall apply to all quotations made and orders received by the Supplier, including those given verbally, on email, fax or written.

2.4 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of [30] days from its date, provided that the Supplier has not previously withdrawn it.

### **3. COMMENCEMENT AND DURATION**

3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer in accordance with condition 2.2.

3.2 Subject to condition 10, the Services supplied under the Contract shall continue to be supplied until the Supplier has provided the Deliverables to the Customer.

### **4. SUPPLIER'S OBLIGATIONS**

4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with Schedule 1.

4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in Schedule 1, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

### **5. CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects; and
- (c) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of In-put Material insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start;

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors,

consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

- 5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 24 months after the last date of supply of the Services, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Supplier in the provision of the Services.
- 5.5 Any consent given by the Supplier in accordance with condition 5.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 5% of the then current annual remuneration of the Supplier's employee, consultant or subcontractor or, if higher, 5% of the annual remuneration to be paid by the Customer to that employee, consultant or subcontractor.

## **6. CHARGES AND PAYMENT**

- 6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in Schedule 3, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if the Supplier provides Services on a time and materials basis. Condition 6.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this condition 6 shall apply in either case.
- 6.2 Where Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in Schedule 3 and as amended from time to time by the Supplier giving not less than 1 months' written notice to the Customer;
  - (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on weekdays (excluding public holidays);

- (c) the Supplier shall be entitled to charge an overtime rate of 10% of the [standard] daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 6.2(b);
  - (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate; and
  - (e) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges.
- 6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in Schedule 3 subject always to condition 6.4 and condition 6.7.
- 6.4 Any fixed price and daily rate contained in Schedule 3 excludes:
  - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and
  - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 6.5 The Supplier shall invoice the Customer for the Services on the last working day of the month in which the Services were delivered.
- 6.6 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 6.7 The Supplier shall have the right to adjust its prices for any changes to the Services required by the Customer after the date of the Contract which shall be payable by the Customer
- 6.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
  - (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Supplier

may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Services until payment has been made in full.

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

6.10 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.11 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## **7. INTELLECTUAL PROPERTY RIGHTS**

7.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to condition 7.2, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Supplier terminates the Contract under condition 10.1, this licence shall automatically terminate.

7.2 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

## **8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

8.1 The Customer 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 the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

8.2 The Customer may disclose such information:

(a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and

- (b) as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.
- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## **9. LIMITATION OF LIABILITY**

- 9.1 This condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
  - (a) any breach of the Contract;
  - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
  - (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
  - (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 9.4 Subject to condition 9.2 and condition 9.3



- (a) the Supplier shall not be liable for:
  - (i) loss of profits;
  - (ii) loss of business;
  - (iii) depletion of goodwill and/or similar losses;
  - (iv) loss of anticipated savings;
  - (v) loss of goods;
  - (vi) loss of contract;
  - (vii) loss of use;
  - (viii) loss of corruption of data or information;
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

## **10. TERMINATION**

10.1 Without prejudice to any other rights or remedies which the Supplier may have, the Supplier may terminate the Contract without liability to the Customer immediately on giving notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of them being notified in writing of the breach;
- (c) the Customer repeatedly breaches any of the terms of the Contract 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 the Contract;
- (d) the Customer 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;
- (e) the Customer 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 for the sole purpose of a scheme for a solvent amalgamation of them with one or more other companies or the solvent reconstruction of them;

- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of them with one or more other companies or the solvent reconstruction of them;
- (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 Customer; or
- (h) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or
- (j) a creditor or encumbrancer of the Customer 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; or
- (k) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 10.1(d) to condition 10.1(j) (inclusive); or
- (l) the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the Customer.

10.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

10.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 7;
- (b) condition 8;
- (c) condition 9;
- (d) condition 10; and
- (e) condition 20.

## **11. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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 suppliers or subcontractors.

## **12. VARIATION**

12.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.

12.2 Subject to condition 12.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of the Supplier.

## **13. WAIVER**

13.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

13.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**14. SEVERANCE**

- 14.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 14.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

**15. ENTIRE AGREEMENT**

- 15.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 15.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 15.3 Nothing in this condition shall limit or exclude any liability for fraud.

**16. ASSIGNMENT**

- 16.1 The Supplier may at any time assign, transfer, charge, mortgage, 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.
- 16.2 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

**17. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**18. RIGHTS OF THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

**19. NOTICES**

19.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in Schedule 2, or as otherwise specified by the relevant party by notice in writing to the other party.

19.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in Schedule 2 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

19.3 This condition 19 shall not apply to the service of any in any proceedings or other documents in any legal action.

19.4 A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

**20. GOVERNING LAW AND JURISDICTION**

20.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.

### **Schedule 1 Services**

[DESCRIPTION OF THE SERVICES TO BE PROVIDED UNDER THE CONTRACT, INCLUDING, IF RELEVANT, THE COMMENCEMENT DATE.]

**Schedule 2 Notice**

[INSERT THE ADDRESSES FOR DELIVERY OF A NOTICE.]

## **Schedule 3 Pricing**

### **Part 1. Price**

[DETAILS OF PRICE, FOR EXAMPLE THE FIXED PRICE OR DAILY RATE.]