

## STANDARD TERMS AND CONDITIONS - TERMS OF ENGAGEMENT

THIS AGREEMENT IS MADE THIS                      DAY OF  
2005

- A     This is a legal agreement between
- 1     Chris Elgood Associates Limited (Company Registration Number 01083526) whose registered office is at 4 Leylands Business Park, Colden Common, Winchester, Hampshire, SO21 1TH ('the Consultant')
- and
- 2     ***(NAME AND COMPANY REGISTRATION NUMBER) whose registered office is at ADD OFFICE ADDRESS ('the Client')***.
- B     This Agreement applies to Design and Delivery Services provided by the Consultant for the Client.
- C     The terms and conditions detailed in this Agreement govern the relationship between the parties.
- D     This Agreement should be read in conjunction with the Confidentiality Agreement and the Special Conditions.

### 1     Definitions

- 1.1   Commencement Date means the date at the head of this Agreement
- 1.2   Confidentiality Agreement means the confidentiality agreement previously agreed between the parties on ***[insert date]***;
- 1.3   Currency: pounds sterling;
- 1.4   Design and Delivery Services: as specified in the Special Terms and Conditions
- 1.5   Intellectual Property Rights means patents, rights in design, trade marks, trading, business or domain names and e-mail addresses, copyrights (including any such rights in typographical arrangements, Websites or software) whether registered or not and any applications to register or rights to apply for the registration of any of the foregoing, rights in inventions, know-how, trade secrets and other confidential information, rights in databases and all other intellectual property rights of a similar or corresponding character which subsist now or in the future in any part of the world;
- 1.5   Notice: notice complying with the terms of clause 16;
- 1.6   Payments: as specified in the Special Terms and Conditions;

- 1.7 Special Terms and Conditions: the project outline to include specific detail relating to the individual project to be completed by the Consultant for the Client, to include a project plan, agreed between the parties outlining timescales for project delivery;
- 1.8 Term as specified in the Special Terms and Conditions.

## **2 Appointment**

The Client appoints the Consultant to carry out the Design and Delivery Services for the Term in return for the Payments.

## **3 Client's Obligations**

In consideration of the Design and Delivery Services to be rendered by the Consultant under this Agreement the Client agrees:

- 3.1 Payments  
to make Payments promptly, within 30 days of the relevant invoice date;
- 3.2 Expenses  
to (on the presentation of invoices or vouchers or other evidence of actual payment) reimburse the Consultant for all expenses incurred about the discharge of his duties under this Agreement;
- 3.3 Information Provision  
to ensure that the Consultant is provided in good time with all information needed to enable the Consultant to perform the Design and Delivery Services and the Consultant will be entitled to rely on that information;
- 3.4 Time and assistance  
to give all decisions and approvals in a timely manner and provide any additional assistance which the Consultant may reasonably request;
- 3.5 Availability  
to make himself or a duly authorised representative available to work with the Consultant as per a schedule (the Special Conditions) agreed between the parties;
- 3.6 Confidentiality  
to comply with the terms of confidentiality agreed between the parties within the Confidentiality Agreement.

## **4 Consultant's Obligations**

Throughout the performance of this Agreement the Consultant agrees to the following:

### **4.1 Design and Delivery Services**

- 4.1.1 to be carried out by the Consultant, as detailed in the Special Terms and Conditions;

- 4.1.2 exercising reasonable skill, care and diligence in the performance of the Design and Delivery Services in accordance with the standards of the Consultant's industry;
- 4.1.3 the Consultant will also use reasonable endeavours to adhere to the timescales agreed with the Client for the provision of the Design and Delivery Services, but will not be responsible for any delay which is due to reasons attributable to the Client or otherwise beyond the Consultant's control;
- 4.2 Confidentiality  
to comply with the terms of confidentiality agreed between the parties within the Confidentiality Agreement;
- 4.3 Delegation and assignment  
not to delegate any duties or obligations arising under this Agreement otherwise than may be expressly permitted under its Terms;
- 4.4 Insurance  
the Consultant will take appropriate steps to remedy any defect in the Design and Delivery Services for which it is responsible and which is immediately notified to it by the Client at any time up to [XXXX] months following completion of the Design and Delivery Services;
- 4.5 Cancellation  
the Client may cancel this Agreement at any time before [insert date] and shall then be liable to pay to the Consultant **£ [insert fee]**;

## **5 Intellectual Property**

Copyright in all drawings, reports, documents and computer-generated data prepared by the Consultant will remain the property of the Consultant. Subject to the Client paying all payments which are due, the Client will have a licence to copy and use those documents and data for the purpose related to the project (as detailed in the Special Terms and Conditions) for which the Design and Delivery Services are provided but not to alter or amend the documents or data.

## **6 VAT**

- 6.1 All sums payable under this Agreement unless otherwise stated are exclusive of VAT and other duties or taxes;
- 6.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

## **7 No liability on part of the Consultant unless Consultant in default**

The Consultant shall not be liable to the Client for loss or damage to the Client's property unless due to the negligence or other failure of the Consultant to perform its obligations under this Agreement or under the general law.

## **8 Termination for breach**

The following obligations are conditions of this Agreement and any breach of them shall be deemed a fundamental breach which shall determine this Agreement immediately and the rights and liabilities of the parties shall then be determined in accordance with clause 9:

- 8.1 Failure on the part of the Client to make punctual payment of all sums due to the Consultant under the terms of this Agreement;
- 8.2 Failure on the part of the Consultant to observe any obligation under this Agreement;
- 8.3 The levying of any distress or execution against the Client or the making of him of any composition or arrangement with creditors or being the Client's liquidation (other than a members' voluntary liquidation);
- 8.4 The doing or permitting of any act by which the Consultant's rights in the Intellectual Property may be prejudiced or put in jeopardy.

## **9 Termination consequences**

In the event of this Agreement being determined whether by effluxion of time Notice breach or otherwise:

- 9.1 The Client shall immediately pay to the Consultant:
  - 9.1.1 all arrears of Payments and any other sums due under the terms of this Agreement;
  - 9.1.2 all further sums which would but for the determination of this Agreement have fallen due at the end of the Term less a discount for any accelerated payment at the rate of **XXX** % per year;
  - 9.1.3 in the event of wrongful termination by the Client, the Consultant will in addition pay the Consultant an appropriate amount of compensation for the Consultant's loss of anticipated profit;
- 9.2 either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it;
- 9.3 any right or remedy to which either party is or may become entitled under this Agreement or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this Agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

## **10 Warranty**

Each of the parties warrants its power to enter into this Agreement.

## **11 Interest**

All sums due from either of the parties to the other which are not paid on the due date (without prejudice to the rights of the Consultant under this Agreement) shall

bear interest from day to day at the annual rate of 4 % over the daily base lending rate of Barclays Bank PLC.

## **12 Force Majeure**

Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or if either of them renders the performance of this Agreement impossible whereupon all money due under this Agreement shall be paid immediately and in particular:

- 12.1 the Client shall immediately pay to the Consultant all arrears of Payments;
- 12.2 each party shall be liable to pay to the other damages for any breach of this Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.

## **13 Severance**

If any provision of this Agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of the Consultant it may be severed from this Agreement or the remaining provisions of this Agreement shall remain in full force and effect unless Consultant in Consultant's discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event the Consultant shall be entitled to terminate this Agreement by 30 days' notice to the Client and the provisions of clause 9 shall apply accordingly.

## **14 Whole agreement**

Each party acknowledges that this Agreement, along with the Confidentiality Agreement and the Special Conditions contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or Consultants and has made its own independent investigations into all matters relevant to it

## **15 Change of address and contact details**

Each of the parties shall give notice to the others of the change or acquisition of any address or telephone telex or similar number at the earliest possible opportunity but in any event within 48 hours of such a change or acquisition.

## **16 Notices**

Any Notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party shown at the head of this Agreement or by facsimile transmission or by electronic mail or by telex and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile number or electronic

mail or by telex to the correct facsimile number or electronic mail address of the addressee.

#### **17 Joint and several**

All Agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this Agreement shall include genders and the plural and the successor in title to the parties.

#### **18 No assignment or sub-contracting**

The Consultant shall not assign or sub-contract any of its rights or duties under this Agreement without the consent in writing of the Client (such consent not to be unreasonably withheld).

#### **19 Jurisdiction**

This Agreement shall be governed by the law of England and Wales in every particular including formation and interpretation and shall be deemed to have been made in England and Wales.

#### **20 Costs**

Each of the parties shall pay any costs and expenses incurred by it in connection with this Agreement.

#### **21 Amendments**

No amendment to this Agreement will be binding unless in writing and signed by duly authorised representatives of the Client and duly authorised representatives of the Consultant.

**Agreed by the parties through their authorised signatories:**

**Signed by**  
**Duly authorised on behalf of the Consultant**  
**Date**

**Signed by**  
**Duly authorised on behalf of the Client**  
**Date**