

ICC Standard Terms - 2000 edition

[Note: any changes to these standard terms should be made in the appropriate appendix and signed by both parties.]

1. Services

- 1.1. The **Company** will provide the **Client** with the **Services**, commencing on the **Start Date** for the **Contract Period** (unless terminated sooner), and in accordance with the terms of this Contract.
- 1.2. The **Services** will be provided:
 - 1.2.1. from the **Company's** offices, where the **Company** and the **Client** agree that the **Services** may adequately be performed from there, and at the **Location**
 - 1.2.2. for the **Service Hours** on each **Business Day** (unless otherwise agreed with the **Client**), and for such **Excess Hours** (if any) as the **Company** and the **Client** from time to time agree.
- 1.3. Whilst the **Services** are to be performed from the **Company's** offices:
 - 1.3.1. it is the **Company's** responsibility to provide suitable office facilities and adequate equipment (including any specified in the Schedule) so as to enable the provision of such **Services** as can effectively be performed from there
 - 1.3.2. it is the **Client's** responsibility to provide any necessary access to the **Client's** computer network at the appropriate level, including (where necessary) facilities for remote dialin.
- 1.4. Whilst the **Services** are performed at the **Location**:
 - 1.4.1. the **Client** where possible and if appropriate will by prior arrangement make available access to such parts of the **Location** as may be necessary, together with suitable workspace and such on-site technical and administrative support as may be necessary, and with such access to and information about the **Client's** computer systems as may be reasonably necessary
 - 1.4.2. the **Client** where possible and if appropriate will endeavour to provide all necessary access to its computer network at the appropriate level, including (where necessary) facilities for internet access and direct dialup to third party sites
 - 1.4.3. it is the **Client's** responsibility to ensure that the **Consultant** has immediate access to any relevant security and Health and Safety at Work policies.
- 1.5. Telephone support will be provided during the **On Call Hours**.
- 1.6. The **Contractor** shall abide by the **BCS/ICC Code of Practice** and the **BCS Code of Conduct**, and will provide the **Services** in a professional manner, with all proper skill and care, and in accordance with accepted standards, methodologies, and (where appropriate) guidelines relating to software development. Whilst the **Company's** method of work will be its own, the **Company** will comply with the **Client's** reasonable requests, within the scope of the **Services**. The **Company** will be responsible for ensuring that any **Consultants** provided are and remain adequately qualified to perform the **Services**, and for all necessary costs of training.
- 1.7. The **Company** will in any event provide for the use of any of its **Consultants** engaged in performing **Services** such equipment as may reasonably be required for performing the **Services**, including the equipment so specified in the **Schedule**.
- 1.8. The **Company** may permit any **Consultant** it may use to perform the **Services** to take 1 **Business Day** for each 12 **Business Days** worked during the **Contract Period** as holiday at reasonable times, in order that

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the **Company** may comply with its own obligations under the European Council Directive 93/104/EC (the Working Time Directive) and the Working Time Regulations 1998. The **Company** will use reasonable endeavours to provide a substitute **Consultant** during such period(s) (and any other periods when any of the **Company's Consultants** are not available for any other reason); unless the **Company** provides a substitute acceptable to the **Agency**, the **Agency** will not be required to make any payment in respect of any such period(s). Subject thereto, the **Company** shall procure that any **Consultant** shall only take holidays or other time off only by prior arrangement with the **Client**.

- 1.9. If for any reason the **Services** cannot as a result of accident, injury, or otherwise be provided on any **Business Day**, the **Company** or the **Consultant** will inform the **Client** as early as practicable.
- 1.10. The **Agency** acknowledges that the **Company** reserves the right to decline to provide additional advice and assistance which is outside the scope of the **Services**, until and unless it agrees to do so.
- 1.11. The **Company** warrants that it and any **Consultant** provided by it
 - 1.11.1. will use the **Client's** hardware and software only as authorised, for the purposes of the **Client's** business, and for no other purpose
 - 1.11.2. will comply with all relevant Health and Safety legislation and requirements relating to the **Location**, take all reasonable steps to safeguard the **Consultant's** own safety (and that of any others who may be affected by the **Consultant's** acts or omissions), and cooperate with the **Client** in discharging its own Health and Safety obligations
 - 1.11.3. will cooperate with any security policies of the **Client** of which it or a **Consultant** is made aware
 - 1.11.4. will not cause or permit anything which may damage or endanger any Intellectual Property rights belonging to the **Client** (or the **Client's** title to such rights), and will not assist or allow others to do so

2. Timesheets and Payment

- 2.1. The **Company** will invoice the **Agency** every **Invoicing Period**. The **Company** will submit original timesheets to the **Agency** showing hours worked and **Permitted Expenses**, approved and signed by an authorised representative of the **Client**.
- 2.2. The **Agency** will pay the **Company** for all hours actually worked at the **Consultant Charge Rate** for the **Service Hours**, at the **On Call Rate** for the **On Call Hours**, and at the **Consultant Excess Hours Rate** for agreed **Excess Hours** and any Callouts (including travelling time to and from Callouts), together with such **Permitted Expenses** as are actually incurred by the **Company** (save to such extent as they may be directly reimbursed by the **Client**). All charges are subject to VAT as applicable.
- 2.3. The **Agency** will pay the **Company's** invoices in accordance with the **Payment Terms**.
- 2.4. Where the **Consultant Charge Rate** is expressed in a currency other than UK pounds:
 - 2.4.1. If the **Company** so requests, the **Agency** will pay all or part of any due payment in UK pounds at the exchange rate prevailing on the day payment is due as charged to the **Agency** by its bank
 - 2.4.2. Otherwise, the **Agency** will pay the **Company** in the currency stated in the **Consultant Charge Rate**.

3. Approval of Consultants

- 3.1. The **Services** will be provided by such **Consultant(s)** as the **Company** proposes and the **Agency** accepts. No **Services** shall be provided by any **Consultant** unless the **Agency** has accepted him or her.
- 3.2. The **Company** may at any time propose a prospective **Consultant**. The **Agency** may at its discretion accept or decline any such prospective **Consultant**.

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- 3.3. The **Company** will take reasonable steps to avoid changes of the **Consultant** assigned for the time being to provide **Services**, but the **Agency** acknowledges that the **Company** reserves the right to choose which of its **Consultants** the **Agency** has accepted shall do so, and from time to time to make substitutions thereof.
- 3.4. **Services** will not at any one time be provided by more than the number of **Consultants** specified as such in the Schedule.
- 3.5. Where **Services** are performed at the **Company's** offices, the **Agency** acknowledges the **Company's** right to appoint one or more assistants, provided that no charge will be made to the **Agency** or the **Client** for **Services** provided by any such assistant(s).

4. Termination

- 4.1. This Contract may be terminated by either party giving the other written notice of the **Notice Period** (or, if termination is by the **Agency**, by making payment in lieu).
- 4.2. This Contract may be terminated by the **Agency** on written notice:
 - 4.2.1. with immediate effect at any time, if the **Company** is in material breach of contract, or in breach of contract and fail to remedy the breach within seven days of being required in writing to do so.
 - 4.2.2. with immediate effect, if the **Agency** terminates its Contract with the **Client** for the supply of the **Consultant's** services as a result of
 - 4.2.2.1. breach by the **Client** of any contract between the **Agency** and the **Client** , or
 - 4.2.2.2. loss of confidence by the **Agency** (on reasonable grounds) in the creditworthiness of the **Client**
 - 4.2.3. with immediate effect, if the **Company** fails to provide **Services** without prior arrangement for more than 5 days in the preceding 20 **Business Days**.
- 4.3. This Contract may be terminated by the **Company** on written notice with immediate effect, if the **Agency** is in material breach of contract; or if the **Agency** is in breach of contract and fail to remedy the breach within seven days of being required in writing to do so; or if any payment due from the **Agency** becomes more than 7 days overdue.
- 4.4. Subject thereto, this Contract shall terminate at the end of the **Contract Period**, unless extended by mutual agreement.
- 4.5. If the **Consultant** continues to provide services to the **Client** at the end of the **Contract Period** without any written agreement for extension between the parties, then such services shall be provided on the terms of this Contract, save that either party may terminate with immediate effect on written notice.
- 4.6. Save as expressly provided, termination shall not affect any accrued rights of either party.
- 4.7. Any obligation in this Contract of a continuing nature shall remain in force after termination.

5. Property

- 5.1. If any property is issued to the **Company** or the **Consultant** by the **Agency** or by the **Client** in connection with this Contract, the **Company** will:
 - 5.1.1. use it for no other purpose
 - 5.1.2. take all proper care of it

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5.1.3. return it at the end of this Contract in good serviceable condition, fair wear and tear only excepted

5.1.4. ensure that at all times it is adequately insured

5.1.5. under no circumstances seek to exercise any lien on such property.

5.2. All property of the **Company** or of the **Consultant** shall be at the owner's risk at all times.

5.3. If any computer equipment and software of the **Company** or of any **Consultant** is used in the course of performing the **Services**, the **Company** will ensure that it is virus-free; that neither performance nor functionality will be affected by dates prior to, during, and after the year 2000 and all other dates; and that it is in all other respects fully compliant with Year 2000 and any other dates.

6. Copyright and Intellectual Property Rights

6.1. Any copyright and other intellectual property rights arising in the course of the **Consultant's** work with the **Client** shall become and remain the sole property of the **Client**, and the **Consultant** and the **Company** will cooperate in any formal steps that may be required to vest such rights in the **Client**. The **Company** will ensure that the **Consultant** signs any reasonable form of assurance of Intellectual Property Rights that may be required by the **Client**.

6.2. The **Company** will indemnify the **Agency** against any liability the **Agency** may incur as a result of any infringement by the **Company** or the **Consultant** of any third party's intellectual property rights, other than to the extent that any such infringement directly results from compliance with any specific instruction issued by the **Agency** or by the **Client**.

7. Confidentiality and Secrecy

7.1. The **Company** acknowledges that information disclosed to and developed by it and/or the **Consultant** in the performance of this Contract may include confidential information in which the **Client** has and/or the **Client's** customers have an interest. The **Company** agrees that it and the **Consultant** will keep such information confidential, and will not use any part or the whole of such information (or information which it or the **Consultant** has gained as a result of such disclosure) other than to perform its duties under this Contract.

7.2. Such protection shall not extend to any information in respect of which it can be proved by documentary evidence produced upon written request:

7.2.1. is already known to the **Company** and/or the **Consultant** or in the possession of either of them before the disclosure hereunder, free of any obligation to keep it confidential; or

7.2.2. is or becomes publicly known through no wrongful act or default of the **Company** and/or the **Consultant**; or

7.2.3. is received by the **Company** and/or the **Consultant** free of restriction from a third party who was permitted to disclose it; or

7.2.4. is already independently developed by the **Company** and/or the **Consultant**; or

7.2.5. is disclosed to a third party without similar restrictions on that third party's rights of disclosure; or

7.2.6. is approved for release by written authorisation.

7.3. On termination of this Contract any materials provided by the **Client** shall be handed over in their entirety to the **Client** with no copies being retained.

- 7.4. The **Company** will ensure that the **Consultant** signs any reasonable form of non-disclosure, secrecy, or confidentiality agreement that may be required by the **Client**.

8. Status of Consultant

- 8.1. This Contract is a contract for the provision of specialist Professional Consultancy Services; the relationship governed by this contract is neither that of agent-principal, nor that of employer-employee. Any **Consultants** provided by the **Company** are and will remain employed by the **Company**; they are not employed by the **Agency**, and during this Contract will not be employed by the **Client**.
- 8.2. The **Company** shall be solely responsible for making all appropriate payments to or in respect of all its **Consultants**, including salary, sickness SSP and holiday pay, pensions, and other employee benefits.
- 8.3. In particular, the **Company** is solely responsible for making all proper deductions for taxes, National Insurance, and any other form of Social Security contributions from all payments it makes to any **Consultant**, and for accounting for such payments and for any penalties to the appropriate authorities. The **Company** will fully indemnify the **Agency** and the **Client** against any failure by the **Company** to make any such payment.
- 8.4. Save to the extent expressly agreed herein, and subject to arrangements for meetings and liaison, the **Company** will determine the time and place at which it will carry out the **Services**, and neither it nor its **Consultants** will be subject to control either by the **Agency** or by the **Client** as to the nature of the **Services**, or the place, time or manner at and in which the **Services** are to be provided.
- 8.5. This Contract is not exclusive, and the **Company** and its **Consultants** are and remain at liberty to also provide services to third parties.
- 8.6. The **Company** warrants that both it and the **Consultant** will:
- 8.6.1. ensure that it and the **Consultant** are fully aware of their respective responsibilities under all relevant legislation (including any local legislation relating to the **Location**)
 - 8.6.2. comply with those responsibilities.
- 8.7. The **Company** warrants that it will ensure that the **Consultant** (and, where appropriate, it):
- 8.7.1. complies with any local requirements for Registration of Residence
 - 8.7.2. complies with any local requirements for obtaining a Work Permit
 - 8.7.3. registers for local taxation within any period required by the laws of the country where the services are to be provided
 - 8.7.4. registers for Social Security purposes with the appropriate authority (unless, where applicable, the **Consultant** has been issued with a valid E101).
- The **Company** will, if the **Agency** reasonably so requires, produce to the **Agency** on demand documentary evidence that these provisions have been complied with.

9. Restriction

- 9.1. The **Company** warrants that neither the **Consultant** nor the **Company** shall without the express written consent of the **Agency** supply the services of the **Consultant** directly, or through any other person, firm or **Company**, to the **Client** at the **Location** for the period of six months after the termination of this Contract (including any extensions), save in the case of supply through an employment **Agency** or recruitment consultancy with whom the **Consultant** was registered at the date of commencement of this Contract.

- 9.2. This restriction shall cease to have effect if this Contract is terminated for breach on the part of the **Agency**, or if the **Agency** ceases to be an approved supplier of the **Client** in relation to the supply of such services are to be provided under this Agreement. This restriction is imposed and accepted solely for the purpose of protecting any business connection the **Agency** may have with the **Client**.

10. Liability

- 10.1. Neither party shall be liable for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement in excess of the total amount payable by the **Agency** in respect of the **Services** for the **Contract Period**, except to the extent that such liability may not be lawfully limited or excluded.
- 10.2. Each party expressly excludes liability for consequential loss or damage which may arise or for loss of profit, business, revenue, goodwill or anticipated savings.
- 10.3. In the event that any exclusion or other provision contained in this Agreement be held to be invalid for any reason and a party becomes liable for loss or damage that could otherwise have been limited, such liability shall be limited to the total amount payable by the **Agency** in respect of the **Services** for the **Contract Period**
- 10.4. Neither party excludes or limits liability for death or personal injury, to the extent only that the same arises as a result of its negligence or that of its employees, agents or authorized representatives.

11. Miscellaneous

11.1. **Client's Agreement**

Where any matter under this Contract is specified to require or be subject to the **Client's** agreement, the signature of the **Client's** authorised representative to a timesheet shall be sufficient evidence of the approval of the **Client** to all matters referred to therein.

11.2. **Non-Assignment**

This Contract is personal to the parties, and neither party may without the written consent of the other assign or dispose of any of its rights hereunder, or subcontract or otherwise delegate any of its obligations under this Contract.

11.3. **Notices**

All notices shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by pre-paid first class post or sent by fax to the intended recipient at the address and/or fax number stated in this Contract or to such other address or fax number as that party may specify to the other in writing. Notices sent by fax shall be deemed received the first **Business Day** following such delivery or sending, and notices which have been posted as above shall be deemed received on the second **Business Day** following posting. Notices given by the **Agency** to the **Consultant** shall be deemed properly served on the **Company**.

11.4. **Waiver**

Failure or neglect by either party at any time to enforce any of these Terms shall not be a waiver of that party's rights and shall not prejudice that party's rights to take action in respect of the same or any later breach.

11.5. **Severability**

If any term of this Contract is held by any court or other competent authority to be wholly or partially void, invalid, or unenforceable then such term shall be severed from the body of these terms (which shall continue to be valid and enforceable to the fullest extent permitted by Law).

11.6. **Entire Agreement**

- 11.6.1. This Contract constitutes the entire understanding between the parties, and no addition, amendment or modification of these terms shall be effective, unless in writing and signed by each party

11.6.2. This Agreement takes precedence over any agreement that may be made between the **Company** (or a **Consultant**) and the **Client**.

11.6.3. Each party acknowledges that, in entering into this Contract, it does not do so on the basis of or rely on any representation, warranty or other provision except as expressly provided in this Contract, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.

11.7. **Force Majeure**

11.7.1. If either party to this Contract is prevented or delayed in the performance of any of its obligations under this Contract by force majeure, then such party shall be excused the performance for so long as such cause of prevention or delay shall continue.

11.7.2. For the purpose of this Contract 'force majeure' shall be deemed to be any cause materially affecting the performance of this Contract arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of such party and inter alia including the following:

11.7.2.1. strikes, lockouts or other industrial action

11.7.2.2. civil commotion, riot, invasion, war threat or preparation for war

11.7.2.3. fire, explosion, storm, flood, earthquake, subsidence, epidemic, radioactive emissions, bad weather or other natural physical disaster

11.7.2.4. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport

11.7.2.5. political interference with the normal operations of any party to the agreement.

11.7.3. Either party may terminate this Contract by immediate written notice to the other if it has been materially prevented from performing its obligations under this Contract by force majeure for **5 Business Days** or more during the preceding **20 Business Days**.

11.8. **Interpretation & Definitions**

11.8.1. The headings in these Terms are for convenience only and are not intended to have any legal effect.

11.8.2. This 'Contract' means these terms, the Schedule and all Appendices; in the event of any conflict between the Schedule or any Appendix and these terms, the Schedule or Appendix shall prevail.

11.8.3. References to Acts of Parliament, Statutory Instruments, or other subordinate legislation shall be construed as reference to such as were in force at the time of execution of this Contract.

11.9. **Law**

11.9.1. This Contract is governed by the laws of England and any questions arising shall (subject to any provision for arbitration) be dealt with only by the English courts.

11.9.2. Any dispute or difference arising out of or in connection with this agreement shall be referred to the arbitration of a single arbitrator appointed by the agreement of the parties or failing such agreement by the President for the time being of the British Computer Society. The arbitration shall be governed by the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof.

11.9.3. Where this document is also provided in a language other than English, whilst the translation is believed to be accurate, no warranty to that effect is given, and the English language version shall prevail.