

## Standard Terms and Conditions (England)

### 1. The Agreement, the parties and the Services

This Agreement is a contract for supply of services between the following parties:

- a. The Client, to whom the proposal ("the proposal") is addressed and who may have provided the brief or terms of reference incorporated in the proposal, and
- b. Moses Cameron Williams Ltd ("the Consultant"), who submitted the proposal and whose registered office is at Tim Phillips & Co., Accountants, Copley Business park, Cambridge CB22 3GN

The Agreement includes these Terms of Agreement and the proposal and constitutes the entire agreement between the Parties, supersedes any previous agreements between the Parties and applies to the services specified in the proposal and any other services carried or to be carried out by the Consultant ("the Services") relative to the project which is the subject matter of the proposal ("the project") unless otherwise agreed in writing.

### 2. Consultant's Obligations

The Consultant has exercised and will continue to exercise in relation to the performance of the Services all the skill, and care reasonably to be expected of an appropriately qualified and competent professional consultant experienced in performing the same services which the Consultant is obliged to perform pursuant to this Agreement. The Consultant shall use reasonable endeavours to perform the Services in accordance with any programme agreed with Consultant from time to time. The Consultant shall have no liability for any failure or delay in the provision of the Services or any part thereof resulting from any condition or circumstance beyond reasonable control of the Consultant and the Client shall pay the Consultant in accordance with clause 12 during the persistence of such a condition or circumstance.

### 3. Third Party Rights

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

### 4. Assignment and Sub-Letting

Neither Party shall assign or otherwise transfer any obligation or benefit under this Agreement without the prior written consent of the other Party which consent shall not unreasonably be delayed or withheld. Assignment shall be by absolute legal assignment only and only to the Party taking on the entire role of the Consultant or Client as the case may be in relation to the project. The Consultant may subcontract the Services.

### 5. Documentation

Insofar as the copyright therein vests in the Consultant and subject to the payment of any fees properly due under this Agreement, the Consultant hereby grants to the Client a non-exclusive, royalty free licence to use the documents produced by the Consultant in connection with the Services for the purposes described in (or reasonably to be inferred from) this Agreement. The Consultant shall not be liable for any use made of the documents other than that for which the same were prepared by or on behalf of the Consultant.

Each Party shall maintain the confidentiality of any documents and other information received from the other Party which are confidential. Such recipient shall not release or disclose such documents or information, or permit release or disclosure, except as authorised by the other Party for the purposes of carrying out its obligations pursuant to this Agreement or as obliged to do so by law.

### 6. Obligations of the Client

The Client warrants that it has the right to have the Services performed, and has obtained necessary licences and approvals. The Client shall indemnify and hold harmless the Consultant from and against all consequences of any failure in this respect. The Client shall arrange such rights of access to the property and use of the Client's facilities as described in (or reasonably inferred from) this Agreement. The Client shall supply to the Consultant, promptly and free of charge:

- a. any instructions, decisions, consents and approvals
- b. any relevant data and information in the possession of the Client or any of his agents, consultants, or contractors which the Consultant may require in order to carry out the Services.

## **7. Site Operations**

The Consultant in making such site visit(s) as may be agreed as part of the Services shall be the Client's visitor. The Consultant shall not be deemed to have assumed the role of occupier or otherwise to have assumed control or responsibility for the site or personnel on it. The Client shall notify any other consultants and contractors on the site (other than the Consultant's sub-consultants):

- a. of the presence of the Consultant's personnel; and
- b. of the extent (if any) to which the Consultant is authorised to direct/or supervise their work; and
- c. that the presence (or otherwise) of the Consultant's personnel does not relieve them of their responsibilities including safety and their obligations under their respective contracts and agreements.

The Consultant shall take reasonable precautions and use reasonable endeavours to minimise damage to property, including utilities and other sub-surface obstructions. If, notwithstanding such precautions and endeavours, any such property is damaged, the cost of rectification and all other losses shall be borne by the Client.

## **8. Estimates, Forecasts and Opinions of Cost**

In the event that the Consultant or his personnel provides any indication of the cost of future work by the Consultant, such indications shall not constitute the offer of a fixed fee for the work, except in the case of a written proposal or quotation being provided by the Consultant and accepted in writing by the Client.

In the event that the Consultant or his personnel provides any indication of the cost of future work by others, such as for construction or remedial work, such indications shall not be deemed to guarantee that a contractor will be willing to execute the work at such a cost. The Consultant shall use reasonable skill and care in preparing realistic opinions and estimates which indicate the order of magnitude of future costs. The Client acknowledges that the actual cost of such work will be affected by many factors beyond the Consultant's control and/or predictability.

## **9. Remuneration**

The Client shall pay the Consultant for the Services. Unless otherwise agreed:

- a. Payments of any lump sum fee shall be in equal monthly instalments but if no lump sum fee is agreed shall be on a time basis in accordance with the Consultant's attached schedule of hourly rates.
- b. All payments of fees shall be made monthly in arrears
- c. All reasonable disbursements shall be reimbursed at cost plus a handling charge of 10%

Amounts quoted in this agreement exclude any Value Added Tax ("VAT") payable under the law.

## **10. Additional Remuneration**

If the Consultant has to carry out additional work and/or suffers delay or disruption in the performance of the Services then the Client shall make an additional payment to the Consultant in respect of the additional work carried out and additional resources employed (unless and to the extent that the additional work has been occasioned by the failure of the Consultant to exercise reasonable skill and care) and/or the delay or disruption suffered on the basis of time based fees as set out in clause 9 unless otherwise agreed.

## **11. Payment Procedure**

The Client shall pay the Consultant each amount invoiced including VAT where applicable subject to correction of any error. If any part of an invoice is not agreed the Client shall promptly pay the other parts(s). If the amount invoiced, subject to any deductions which the Client was entitled to make, is not received by the Consultant within thirty days of the date on which the Client received the invoice, the Client shall also pay to the Consultant interest compounded monthly at a rate equivalent to 4% per annum above the base lending rate of HSBC Bank

## **12. Termination and Delay**

Either Party may give 30 days written notice of termination to the other Party (without prejudice to either party's right to terminate immediately in the event of insolvency of the other party). Payment to the Consultant in the event of termination shall comprise payments due for such Services carried

out up to and including the date of termination together with any disbursements due under clause 9 hereof, the costs for repatriation (if any) and of any commitments entered into by the Consultant on the assumption that this Agreement would run its full course. Payment to the Consultant during the persistence of any delay for reasons beyond the reasonable control of the Consultant shall be all payments due pursuant to clause 9 hereof.

Termination of the Consultant's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either Party to this Agreement.

**13. Liability**

No action or proceedings under or in connection with this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 8 years from the date of completion of the Services or such earlier date as may be prescribed by law.

Notwithstanding any other provision of this Agreement, in no circumstances shall the Consultant's liability under or in connection with this Agreement exceed the payments made pursuant to clause 9 hereof.

In the event of any breach of the terms of this Agreement, the Consultant's liability shall be limited to that proportion of the proper costs to the Client of remedying physical defects in the Project which it would be just and equitable for the Consultant to pay having regard to the extent of the Consultant's responsibility for the same and on the basis that any other consultants or contractors appointed by the Client shall be deemed to have provided undertakings to the Client on terms no less onerous than those contained in this Agreement and shall be deemed to have paid to the Client such proportion which it would be just and equitable for them to pay having regard to the extent of their respective responsibilities.

The Consultant shall not be liable (whether in contract, tort or otherwise) for any indirect or consequential loss or for any loss of profit, use, anticipated savings, goodwill, reputation or business.

**14. Notices**

Any notice to be given under this Agreement shall be in writing and given by sending the same by fax or by first class letter to the Client or the Consultant at their registered or principal office address. Notices shall take effect when they have been received by the Client or the Consultant as the case may be.

**15. Governing Law**

This Agreement shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.