

CAD UP LTD CONSULTANCY TERMS

RECITALS:

- 1 The Client is seeking to perform the Works and wishes the Consultant to perform the Services in connection with such Works;
- 2 The Consultant has agreed to perform the Services for the Client upon the terms and conditions hereinafter stated;
- 3 The Client has agreed to make the payments and perform its other obligations upon the terms and conditions hereinafter stated; and
- 4 These Terms shall be read in conjunction with the Scope of Services agreed by the Parties. The Scope of Services and these Terms comprise the Contract between the Parties.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

In this Contract, the following words shall have the following meanings:

"Authorised Representative" means the person who has the authority to represent a Party and to agree changes to the Contract as named in the Scope of Services. Changes to the Authorised Representative shall be notified in writing.

"Client" means the person or persons, company, firm or other legal entity named in the Scope of Services as the Party to whom the Consultant shall supply the Services. Where the Client is more than one person then their liability shall be joint and several.

"Confidential Information" means any document, specification, drawing, idea, data, software or other information disclosed to, or ascertained by the other party during the course of this Contract, other than: information already known by the receiving party under no obligation of confidence; information which is or becomes publically known otherwise than by the wrongful act of the receiving party; information obtained by the receiving party from a third party not under an obligation of confidence; information disclosed to a third party otherwise than under an obligation of confidence; or information independently created by the receiving party.

"Consultant" means CAD UP Ltd, whose registered office is Market House, 21, Lenten Street, Alton, Hampshire GU34 1HG (registered number 7219215).

"Contract" means the Scope of Services and these Terms as may be amended by the Parties by agreement in writing in accordance with the Contract.

"Parties" means the Client and the Consultant and Party shall be interpreted accordingly.

"Price" means the price to be paid by the Client to the Consultant for the Services as specified in the Scope of Services.

"Scope of Services" means the proposal from the Consultant as to their Services, the Price and other terms, which has been accepted by the Client.

"Services" means the services to be performed by the Consultant as specified in the Scope of Services.

"Works" means the building, construction or engineering works which the Client wishes to construct, as more specifically stated in the Scope of Services.

2. Scope of Services

- 2.1 The Consultant agrees to provide the Services.
- 2.2 The Client agrees to pay the Price.
- 2.3 The Parties agree to perform their other obligations in accordance with the provisions of the Contract.

3. Change Control

- 3.1 At any time prior to completion of the Services, either party may in writing request a change to the Services. Neither party shall unreasonably refuse such request, but such change in the Services may be subject to a change in the Price, anticipated timetable or other provisions of the Contract.
- 3.2 Any agreed changes to the Services and any other provisions of the Contract shall be agreed by the Authorised Representatives of the Parties and confirmed in writing between them in accordance with clause 19 below.
- 3.3 The Consultant shall not be obliged to undertake any change to the Contract in the absence of a written confirmation of the change from the Authorised Representative of the Client.

4. **Client Responsibilities**

- 4.1 The Client agrees to:
 - 4.1.1 supply the Consultant in a timely manner with complete and accurate information concerning its operations and activities, including any delays, termination, or proposed changes to the Works and reasonable notice of the re-commencement of the Works;
 - 4.1.2 review all documents, drawings, plans and specifications provided for review and provide constructive comment on the same if required in a timely manner;
 - 4.1.3 provide adequate access to the proposed site and the Works and to suitably qualified and experienced personnel (including of other consultants and contractors) to answer questions relating to the Works and as agreed to participate in the Services in a timely manner and in accordance with all applicable health and safety regulations and good practice;
 - 4.1.4 provide access to the Authorised Representative of the Client who is able to make binding decisions on behalf of the Client in a timely manner;
 - 4.1.5 where the Consultant is working on the Client's premises, provide suitable access, accommodation and facilities as reasonably necessary for the performance of the Services;
 - 4.1.6 where the Consultant recommends the appointment of a specialist consultant to be contracted to the Client, enter into a contract with such consultant subject to reasonable terms being agreed, including that the consultant shall work in liaison with the Client and the Consultant;
 - 4.1.7 require its' contractor performing the Works to work in liaison with the Consultant and provide all necessary information and comply with all reasonable instructions of the Consultant where within the scope of the Services;
 - 4.1.8 execute all necessary Consultant and third-party licences relating to the use of any intellectual property as reasonably requested; and
 - 4.1.9 notify the Consultant promptly of any concerns relating to the carrying out of the Services.

5. **Timescales, Progress Meetings and Reports**

- 5.1 Commencement of the Services may be dependent upon payment of an initial sum as stated in the Scope of Services.
- 5.2 Progress meetings, inspections and reports shall be as stated in the Scope of Services or as otherwise agreed between the Parties.
- 5.3 The Parties shall use reasonable endeavours to comply with any agreed timescales, or otherwise shall perform their obligations within a reasonable time, but time shall not be of the essence in relation to the finalisation of the Services or any stage thereof unless expressly stated in the Scope of Services, or made so as part of any remedy allowed under this Contract.

6. **Price and Payment**

- 6.1 The Price may be either fixed, on the basis of a daily rate, a percentage of the price of the Works, or other basis and may be inclusive or exclusive of expenses; all as stated in the Scope of Services. Disbursements such as payments for planning or building consent shall be paid for by the Client unless otherwise stated in the Scope of Services.

- 6.2 All sums payable under this Contract are exclusive of VAT and all other taxes and duties which shall (with the exception of taxes levied on the income of the Consultant) be paid by the Client in addition at the then applicable rate.
- 6.3 Invoices shall be submitted by the Consultant in accordance with the payment provisions of the Scope of Services, or otherwise monthly in arrears. The Client agrees to pay each invoice within fourteen days of the date of issue without set off or counter-claim.
- 6.4 If the Client fails to pay any sum due, the Consultant may (without prejudice to its other remedies) charge interest on outstanding payments from the date of issue of the invoice concerned until the date of payment at the rate of five per cent per annum over the Bank of England Base Rate from time to time in force.
- 6.5 The Client acknowledges that where the Services are provided on a time and materials basis any estimates given of the time required to complete the Services or the total Price are estimates only and shall not be binding on the Consultant.

7. Warranties

- 7.1 The Consultant warrants that the Services shall be carried out using reasonable care and skill.
- 7.2 Where the Client believes that the Consultant is in breach of the warranty specified in sub-clause 7.1, it shall inform the Consultant in writing of the specific claim within thirty days of the performance of the specific Services concerned and the Consultant shall make arrangements for the re-performance of such specific Services that it agrees (acting reasonably) are not in accordance with sub-clause 7.1, within a reasonable time, at no cost and without significant inconvenience to the Client.
- 7.3 Without prejudice to the remedies available to the Client if the Client is a consumer as defined in the Consumer Rights Act 2015 (and in particular sections 55 (Right to Repeat Performance) and 56 (Right to Price Reduction) thereof; the provisions of this Clause state the entire liability of Consultant and the exclusive remedy of the Client regarding the professional standard of care applicable to the performance of the Services.

8. Property Rights and Licensing

- 8.1 Each party shall continue to own intellectual property rights owned by it prior to the commencement of the Services.
- 8.2 Intellectual property rights created by or on behalf of the Consultant in the performance of the Services, including in any document, drawing, specification, software, data or other information or process shall continue to be owned by the Consultant.
- 8.3 Subject to payment of the Price, the Consultant grants to the Client an irrevocable (unless due to breach), non-exclusive, non-transferable licence to use the Consultant owned software and documentation provided by the Consultant hereunder strictly for the sole purpose of performing the Works as they are stated in the Scope of Services. If the Client wishes to use the Consultants intellectual property for any wider purpose, it shall seek the written consent of the Authorised Representative of the Consultant.

9. Termination

- 9.1 Either party may terminate this Contract by notice in writing in the event that:
- 9.1.1 the other Party is in material breach of this Contract and does not remedy such breach within thirty days of written notification to do so; or
- 9.1.2 the other Party dies, ceases trading or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation whether voluntary or compulsory (other than for the purposes of amalgamation or reconstruction), or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or part of its assets or becomes unable to pay its debts, or suffers the equivalent of any of the above as applicable under any jurisdiction to which it is subject; or
- 9.1.3 in the case of the Client, any invoice submitted by the Consultant is not paid within twenty-five days of issue; or
- 9.1.4 one Party gives the other 30 days' written notice of termination; or
- 9.1.5 in accordance with clause 12.2 (Force Majeure); or

9.1.6 where the Client is a consumer as defined in the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the "CCR 2013"), he may have a right to cancel the Contract in accordance with regulation 29 thereof within 14 days from the date of contract and more information is provided on such right in the Scope of Services.

9.2 Termination shall not prejudice or affect any right of action or remedy which has or shall thereafter accrue to either party. Subject to termination in accordance with clause 9.1.6 above, the Consultant shall be entitled to be paid by the Client for all Services performed hereunder, together with all costs and expenses relating to equipment, materials and services obtained or ordered in connection with the Services which cannot reasonably be defrayed elsewhere.

10. Confidentiality

- 10.1 Each Party agrees to hold the other Party's Confidential Information in confidence and not disclose the same to any third party without the written consent of the other.
- 10.2 This obligation shall continue following the termination of this Contract for any reason.

11. Limitation and Exclusion of Liability

- 11.1 The Parties agree that the express warranties set out in this Contract, including Clause 7 above, are in lieu of and exclude all other conditions and warranties whether implied by statute, law or otherwise, except to the extent that any such conditions or warranties cannot by law be excluded (including, where the Client is a consumer, as defined in the Consumer Rights Act 2015, under section 57 thereof).
- 11.2 The Parties further agree that, except in respect of death or personal injury caused by the Consultant's negligence, the Consultant's liability for damages arising under or in connection with this Contract (including without limitation for breach of contract, tort (including negligence) or howsoever) shall in no circumstances exceed:
- 11.2.1 one million pounds in respect of loss of or damage to tangible property; and
- 11.2.2 125% of the Price ascertained at the time of the breach of contract or tort, or twenty five thousand pounds (whichever is the greater) for all other incidents and in the aggregate.
- 11.3 The Parties further agree that the Consultant shall have no liability howsoever arising under or in connection with this Contract (including without limitation for breach of contract, tort, (including negligence), or howsoever) for damages in respect of loss of use, revenue, profits, anticipated savings or gains, contracts, goodwill, data or for any indirect or consequential loss or damage whether or not the Consultant was made aware of or knew of the same.
- 11.4 The Consultant shall not be responsible for advice based on information supplied by the Client or consultants or contractors appointed by the Client.
- 11.5 The Client shall not hold the directors, employees, consultants or agents of the Consultant liable in respect of any negligence, default or other liability arising from performance of the Services.
- 11.6 The Parties agree that the limitations and exclusions contained in this Clause are fair and reasonable given the circumstances of the Parties, including the Price and that alternative limitations and exclusions can be agreed before contract in consideration of a different Price, or other provisions.

12. Force Majeure

- 12.1 Neither Party shall be liable for any failure to meet or delay in meeting any of its obligations due to any circumstance outside of its reasonable control. Where a Party is delayed by one of its suppliers or sub-contractors it shall only be relieved of responsibility if the delay is due to circumstances which are outside of the reasonable control of such supplier or sub-contractor.
- 12.2 Where either Party is prevented from performing its obligations due to such circumstances, it shall promptly notify the other Party. If either Party is prevented from performing its obligations for more than thirty days then either Party may terminate this contract with immediate effect by notice in writing to the other.

13. **Notices**

13.1 Notices given in accordance with this Contract shall be sent in writing to the other party at the address stated in the Scope of Services, or to such other address as either party notifies the other in writing from time to time. Notices shall be deemed to have been properly given after three working days in the case of such notice being given by first class post.

13.2 Other communications under this Contract may be made or evidenced in writing (including by email and other forms of electronic communication) between the Authorised Representatives of the Parties.

14. **Assignment and Third-Party Rights**

14.1 Neither Party may assign any benefit or burden under this Contract without the prior written agreement of the other. Nothing herein shall prevent the Consultant from delegating the performance of its obligations without consent, provided that the Consultant remains contractually liable to the Client for such delegated obligations.

14.2 Except as stated in clause 11.5, nothing in this Contract confers or is intended to confer on any third party any benefit or any right to enforce any term of this Contract.

15. **Non-Solicitation**

Both Parties agree that for the duration of the Services and for six months thereafter, they shall not employ or engage or offer employment or engagement to any of the other Party's staff who have been engaged in or directly associated with the performance of the Services without the prior written agreement of the other.

16. **Waiver**

No delay in exercising or failure to exercise or partial exercise of any right hereunder shall be deemed to be a waiver of such right under this Contract.

17. **Entire Agreement**

The terms and conditions of this Contract, set out the entire agreement between the parties with respect to the subject matter hereof and supersede all prior discussions, proposals, representations (other than fraudulent misrepresentations), understandings and agreements (whether oral or written and whether made before or after the date hereof), other than implied terms which cannot by law be excluded and changes made in writing by the duly authorised representatives of the parties in accordance with the provisions of this Contract.

18. **Legal Construction**

18.1 If any provision of this Contract is held to be invalid or unenforceable, the provision shall be enforced to the fullest extent possible and the provision shall be deemed to be varied accordingly.

18.2 The headings to the Clauses are inserted for convenience only and shall not affect the interpretation of this Contract.

18.3 In the event of any conflict between the Terms and the Scope of Services, the Terms shall prevail except to the extent that a clause of the Terms is expressly referred to in the Scope of Services as being replaced by different agreed wording as stated therein.

19. **Amendment of this Contract**

19.1 No amendment to the provisions of this Contract shall be binding except a written amendment confirmed in writing (including by email) by the Authorised Representatives of the Parties.

20. **Jurisdiction**

This Contract shall be governed by and interpreted in accordance with the Laws of England and is subject to the exclusive jurisdiction of the English Courts.