

# Vision Design Services (the "Consultant")

## STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF GOODS AND SERVICES

These Terms and Conditions (hereinafter referred to as these "Conditions") shall (except as otherwise indicated in writing by the Consultant) apply to all quotations given and Contracts made for the supply of Services by the Consultant.

### 1. Definitions

In these Conditions:

"Customer" means any customer, firm or other legal person who shall request the performance or delivery of Services by the Consultant;

"Contract" means contract in writing for the supply of Services between the Customer and the Consultant incorporating these Conditions and shall include any schedules, appendices or annexes thereto;

"Due Date" means the date 30 days after the issue of any invoice by the Consultant to the Customer or as otherwise specified in the payment schedule in the Contract;

"Equipment" means all equipment, goods, software, hardware, operating systems, media, computers and computer programs;

"Fee" means the fees and charges to be paid by the Customer to the Consultant for the performance or delivery of the Services upon the terms of the Contract.

"Information" means information, whether written, oral, digital, electronic or in any other form, including but not limited to documentation, specifications, inventions, reports, data, notes, drawings, computer outputs, web-pages, web-sites, designs and all copyright works whatsoever;

"Intellectual Property Rights" means intellectual property rights of whatever nature anywhere in the world and all rights pertaining to such property whether recorded or registered in any manner or otherwise including, without limitation, patents and patent applications, trade marks (both registered and unregistered), trade names, copyrights, registered designs, design rights, database rights, know-how, show-how, trade secrets, technology and expertise;

"Parties" shall mean the Consultant and the Customer and Party shall be construed accordingly;

"Results" means all Information and Equipment which the Consultant agrees to deliver to the Customer as part of the Services; and

"Services" means all Equipment, Information, consultancy and services provided by the Consultant to the Customer on the terms and conditions of the Contract and more particularly detailed therein.

### 2. Performance of the Services

2.1 The Consultant shall use its reasonable endeavours to perform and deliver the Services on the basis set out in the Contract or as may reasonably be implied therefrom.

2.2 Although the dates or times given by the Consultant for performance and delivery of the Services are given in good faith they are only estimates and the Consultant will not be liable for any loss, damage or expense arising directly or indirectly from any delay or failure to perform or deliver howsoever caused to the fullest extent permitted by law. If the performance or delivery of the Services shall be delayed due to circumstances or conditions beyond the control of the Consultant the obligations on the Consultant shall be suspended for as long as such circumstances prevail. Any time quoted for performance or delivery will run from the date of receipt by the Consultant of a written confirmation or order to proceed with the provision of the Services and other necessary information.

### 3. Payments

3.1 In consideration of the provision of the Services, the Customer shall pay to the Consultant the Fee specified in the Contract thereon and any expenses properly incurred by the Consultant in the provision of the Services, by the Due Date

3.2 Any Fee quoted to the Customer by the Consultant is based on current costs of labour, materials and overheads to the Consultant in providing the Services, on the date of quotation and are subject to adjustment by the Consultant on or after acceptance by the Consultant of the Customer's order if there is any increase in such cost. If the Consultant carries out any work at the Customer's request which is not part of the Services (the "Additional Services") under the Contract then, unless the parties otherwise agree in writing, the provisions of the Contract shall apply to the work undertaken as if the Additional Services originally formed part of the Services and if no fee is agreed for the Additional Services, the Consultant shall be paid on a time and materials basis at its standard published rates of charges, or otherwise at a Reasonable Rate.

3.3 Time of payment shall be a material condition to and of the essence of the Contract and unless otherwise agreed in writing by the Consultant, interest at the basic bank rate per month will be payable by the Customer on all sums remaining unpaid after the Due Date for payment. The Customer shall not for any reason be entitled to make any deduction from, or set-off against or withhold payment of the fees to the Consultant.

### 4. Cancellation and Delay

4.1 In the event of delay, suspension or cancellation of the Services due to lack of instruction or provision of data from the Customer or as a result of any cause beyond the direct control of the Consultant, then the Consultant reserves the right to charge the Customer for the amount of any loss or expense incurred by it including, for the avoidance of doubt, any outlays and administrative time and costs incurred and the cost of any materials used. The Customer agrees to pay any amount due to the Consultant notwithstanding delay, suspension or cancellation of the Services as provided in clause 3.1 above.

4.2 No cancellation by the Customer is permitted, nor will any rescheduling of the delivery of Services take place unless expressly agreed by the Consultant in writing, and in such an event a cancellation charge of 30% of the fee for the Services due to be delivered will apply.

### 5. Warranty and Indemnity

5.1 The Consultant warrants that it shall perform and deliver the Services with reasonable care and skill in accordance with generally accepted industry standards; however it does not accept any liability in relation to any loss, damage or expense which arise through any difficulties caused over date changes, and without limitation, which arise through use of third party Equipment with other products or software or use with the Customer's data.

5.2 The Customer shall indemnify and so free and relieve the Consultant of, from and against all loss, liability, damage or expense (including but not limited to liability for death/injury) that the Consultant may suffer directly or indirectly as a result of or in connection with the performance or delivery of the Services. The Customer warrants and undertakes to the Consultant that it has at the date of execution of the Contract effected adequate insurance cover for such liability and that same will be maintained at the Customer's expense for the duration of performance of the Services, and to produce to the Consultant on request proof that such insurance is in force.

### 6. Limitations of Warranties and Liability

6.1 Unless otherwise agreed (and then only to the extent expressly accepted by the Consultant in writing) all Results and advice given by the Consultant in the course of

providing the Services shall be given or prepared in good faith, but are given relative to the purpose for which the Services were intended only. No warranty is given by the Consultant that they are appropriate for any other purpose or use, or the fitness or suitability for any particular purposes.

6.2 The Consultant makes no representations and gives no warranties, guarantees or undertakings concerning its performance, delivery or non-performance or non-delivery of the Services except as expressly set out in the Contract. Any condition or warranty which might otherwise be implied or incorporated within the Contract by reason of statute or common law or otherwise is hereby expressly excluded to the fullest extent permitted by law.

6.3 No warranty or condition is made regarding the Results or that any Equipment provided in connection with the Services shall meet the Customer's requirements or that their operation shall be uninterrupted or error-free. There shall be no obligation on the Consultant to correct, re-perform or re-deliver any of the Services unless specifically requested by the Customer and agreed by the Consultant in accordance with the terms and applicable fees set out in the Contract.

6.4 The Consultant's entire liability to the Customer in respect of any loss or damage arising from any act of or omission by the Consultant including negligence arising in connection with the Contract shall be limited, to the fullest extent permitted by law, to an amount equal to the value of the contract for each event or series of connected events. The Consultant shall under no circumstances be liable to the Customer in respect of any loss of profits, goodwill or any type of special, indirect or consequential loss (including business interruption, loss or corruption of business Information or data and loss or damage suffered by the Customer as a result of any action brought by any third party) even if such loss was reasonably foreseeable or the Consultant had been advised at any time of the possibility of the Customer incurring the same. The Customer waives any claims that these exclusions deprive it of an adequate remedy.

6.5 The Customer agrees that in the event that it is notified by any third party of any claim or potential claim arising from or in connection with the Services, Intellectual Property Rights or the use of the Results then the Customer will (1) forthwith inform the Consultant of such claim or potential claim, (2) make no admissions without first consulting with the Consultant and take all reasonable steps to prevent decree or judgement by default being granted in favour of any such third party and (3) ensure that the Consultant is given the right to conduct proper consultations with the party concerned and (where appropriate) the defence (including, without limitation, settlement, litigation or appeal) of any such claim. If reasonably requested by the Consultant, such defence shall be conducted by the Consultant and the Customer.

### 7. Intellectual Property

7.1 The Consultant shall exclusively own the Intellectual Property Rights which are contained in the Results unless otherwise explicitly stated.

7.2 For the avoidance of doubt, the Consultant shall also retain all Intellectual Property Rights and other rights in all Information not comprised in the Results but generated or used in the provision of the Services and shall be fully entitled to use in any way it deems fit any skills, techniques, methods, processes, formulae, concepts or know-how acquired, developed or used in the course of performing or delivering the Services, at any time, including during or after termination of the Contract.

7.3 The Customer shall fully indemnify the Consultant against all damages, penalties, costs and expenses to which the Consultant may become liable as a result of providing the Services which involves the infringement of any third party Intellectual Property Rights whatsoever.

7.4 In relation to any Equipment provided by the Consultant to the Customer in connection with the Services the copyright or Intellectual Property Rights therein shall remain vested in the owner thereof and the Customer shall enter into and abide by the terms of any end-user licence agreement as may be prescribed by the Equipment owner and other than in accordance with the terms of such licence shall not copy, disassemble, decompile, reverse engineer, translate, modify, adapt, extend, create derivative works from, lease, rent, loan, distribute, sub-lease, transfer or sub-license the Equipment.

### 8. Confidentiality

8.1 Unless otherwise agreed by the Customer, the Consultant agrees to treat as secret and confidential and not at any time for any reason disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of the data provided by the Customer for the performance or delivery of the Services and any Information clearly labelled by the Customer as being confidential and disclosed to the Consultant during the provision of the Services save for any such Information which is or may become in the public domain or is already in the possession of the Consultant, otherwise than as a result of a breach of the Contract, or which the Consultant is required to disclose by law or any order of the Court or any relevant regulatory body.

8.2 The Customer shall keep all Information relating to the Consultant's business methods, systems, processes and business in general which might come into the Customer's possession secret and confidential at all times, including for the avoidance of doubt at any time during or after termination of the Contract. The Customer shall not use, disclose or divulge either directly or indirectly such Information without the express written consent of the Consultant. Any Intellectual Property Rights contained in any of the same are and shall remain the property of the Consultant.

8.3 The Customer shall take all reasonable steps to ensure that all relevant persons engaged or employed by it shall have notice that the provisions of clause 8.2 above apply to them and continue to apply after the completion or earlier termination of the Contract and for the avoidance of doubt, the Customer hereby accepts liability for any loss or damage suffered by the Consultant owing to the use, disclosure or divulgence of any such information by any person engaged or employed by the Customer at any time, which shall include any person ceasing to be engaged or employed by the Customer for any reason whatsoever.

### 9. Title and Risk

9.1 The title to any Equipment supplied by the Consultant to the Customer in accordance with the Services shall pass to the Customer upon payment in full to the Consultant of any sums, fees and charges due under the Contract.

9.2 Risk in the Equipment shall pass to the Customer on delivery. If the Equipment, or any part thereof, shall thereafter be lost, destroyed or damaged the Consultant will replace the same subject to the Customer paying the full costs of such replacement. Accordingly the Customer shall be responsible for insuring the Equipment against all normal risks with effect from the time the risk passes.

### 10. Customer's Undertakings

The Customer undertakes:

- 10.1 to provide the Consultant and its employees designated to perform and deliver the Services with all necessary Information, support and co-operation that may reasonably be required to enable the Consultant to carry out its obligations to the Customer under the Contract and to take all reasonable steps to ensure the health and safety of the Consultant's employees while they are at the Customer's sites;
- 10.2 to provide at no charge to the Consultant adequate office accommodation, a secure work space, telephone services and other facilities including access to the applicable Equipment and systems of the Customer to enable the assigned employees of the Consultant to perform and deliver the Services at the Customer's sites, and further to allow full access to the areas in which the Services are to be performed or delivered at the Customer's premises;
- 10.3 that any Equipment which the Consultant's employees are asked to use or modify for the purpose of the Services are either the property of the Customer or are legally licensed to the Customer and to indemnify the Consultant in respect of any claims against the Customer by third parties including all related costs, expenses or damages in the event of any actual or alleged violations of third party proprietary rights or Equipment licences;
- 10.4 to ensure that its employees and other consultants co-operate fully with the Consultant in relation to the provision of the Services and to furnish the Consultant promptly with such Information and documents as the Consultant may reasonably request for the proper performance of its obligations under the Contract;
- 10.5 to provide or arrange at its expense for any specialist training in the Customer's methods or products which it requires to be undertaken by the Consultant. Time spent in such training will be invoiced at the Consultant's standard published rates of charges.

#### **11. Termination**

The Consultant shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part the Services in any of the following events:

- 11.1 non-payment of monies due by the Customer to the Consultant within 30 days of the Due Date for payment thereof;
- 11.2 the failure by the Customer to accept performance or delivery of any of the Services otherwise than in accordance with the Customer's contractual rights;
- 11.3 the Customer threatening to cease or ceasing trading or the sale of the whole or any part of its assets or the event of a change of its beneficial ownership;
- 11.4 the Customer (being a Customer) shall enter into liquidation whether compulsory or voluntary (save for the purpose of reconstruction or amalgamation without insolvency) or (not being a Customer) shall become bankrupt or (in either case) shall call a meeting of or enter into any composition with its creditors or has a receiver appointed of its undertaking or suffers any distress or execution to be levied on the goods of the Customer or any analogous act.

#### **12. Effect of Termination**

- 12.1 Any termination of the Contract shall discharge the Consultant from any liability for further performance or delivery and shall entitle the Consultant to enter the Customer's premises and recover any equipment or materials which are the property of the Consultant and if the Contract does not specify fees and charges for Services that have been properly performed or delivered the Customer shall immediately pay any sums due under the Contract together with a sum to be calculated in accordance with the Reasonable Rate for any work (including preparatory and 'off-site' work) carried out and not invoiced before termination.
- 12.2 For the avoidance of doubt, any termination of the Contract (howsoever occasioned) shall not affect any accrued liabilities of either Party nor shall it affect the coming into force or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination which further for the avoidance of doubt shall include without limitation all rights and obligations arising under any user licences, clause 7 and clause 8 hereof.

#### **13. Force Majeure**

Save for the Customer's obligation to pay the Fee for the Services, neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failure in performance or delivery thereunder which result from circumstances beyond the reasonable control of that Party. If such circumstances continue for a period of 6 months, either Party may terminate the Contract by serving written notice to the other Party in accordance with clause 14.

#### **14. Notices**

Any notice required in terms of the Contract may be delivered personally or sent by First Class Recorded Delivery Post to the Registered Office or business address of the party to whom the notice is addressed and any such notice shall be deemed to have been validly served sent by post on the expiry of forty eight hours from the time of posting and if delivered personally.

#### **15. Entire Agreement**

- 15.1 Save for a duly executed agreement between the Parties expressly excluding these Conditions, the Contract supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Parties agree to be bound by the Contract which shall apply to the exclusion of any terms or conditions contained or referred to in any acknowledgement, form of contract or other communication to or from the Consultant unless and to the extent that the same is expressly incorporated in the Contract via a written agreement duly executed by the Parties.

#### **16. Rights of Third Parties**

- 16.1 Save as expressly stated herein or the enforcement of any intellectual property rights the Parties hereby expressly exclude the provisions of the Contracts (Rights of Third Parties) Act 1999.

#### **17. Waiver**

- 17.1 No failure, neglect or delay of either Party in exercising any right, power or privilege under the Contract (and no course of dealing between the Parties) shall either be or deemed to be a waiver or in any way prejudice any right of that Party under the Contract. No right, power or remedy in this Contract conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party.

#### **18. Severance**

- 18.1 If any provision of the Contract or any part of such provision is prohibited by law or judged by a court to be unlawful, invalid, void or unenforceable, the provision shall be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

#### **19. No Agency / Partnership**

- 19.1 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract.

#### **20. General**

- 20.1 The Customer shall not assign, sub-contract or sub-license any rights or obligations under the Contract (whether by operation of law or otherwise) without the prior written consent of the Consultant, which shall be granted upon such terms as the Consultant thinks fit. The Consultant shall be entitled to sub-contract the performance or delivery of any part of the Services but shall remain primarily responsible to the Customer.
- 20.2 These terms and conditions shall be governed by and construed in accordance with the Law of the Northern Ireland and the Parties submit to the exclusive jurisdiction of the Northern Irish courts.