



## General Terms and Condition

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_ **XX**

**BETWEEN:**

- (1) **CLIENT**
- (2) DigitalFirst Solutions Ltd, 7 Dewberry Court, Bishop Auckland, County Durham,  
DL14 0TR

**IT IS AGREED** as follows:

- 1. THAT the Client will engage the services of the Consultant in the event that Client secures work that the parties have bid for in collaboration.
- 2. THE parties agree that the Consultancy Agreement terms set out in the attached form of Consultancy Agreement shall apply in respect of any further engagements by the Client of the Consultant unless varied by agreement between the parties

SIGNED by \_\_\_\_\_ )  
on behalf of \_\_\_\_\_ )

**XX**

SIGNED by \_\_\_\_\_ )  
on behalf of **Digital First Solutions Ltd**



## **TERMS AND CONDITIONS:**

### **1 Definitions**

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

- 'the Consultancy Services' means the consulting services to be provided by the Consultant pursuant to this Agreement
- 'the Consultancy Materials' means any and all works of authorship and materials developed, written or prepared by the Consultant, its employees, agents or sub-contractors in relation to the Consultancy Services (whether individually, collectively or jointly with the Client and on whatever media) including, without limitation, any and all reports, studies, data, diagrams, charts, specifications, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto, but excluding ordinary correspondence passing between the Consultant and the Client
- 'the Consultancy Participants' means those employees and permitted sub-contractors of the Consultant engaged from time to time in providing the Consultancy Services and any employees of any such sub-contractors who are so engaged, such Consultancy Participants other than employees of the Consultant to be approved by the Client such approval not to be unreasonably withheld

### **2 Engagement**

- 2.1 The Client hereby agrees to engage the Consultant and the Consultant hereby agrees to act as consultant to the Client in relation to the Consultancy Services
- 2.2 The Consultant represents and warrants to the Client that by virtue of entering into this Agreement it is not and will not be in breach of any express or implied obligation to any third party binding upon it

### **3 Term**

- 3.1 This Agreement shall commence on the Commencement Date and shall continue subject as hereinafter mentioned until Completion of the Consultancy Services
- 3.2 The Client shall be entitled to terminate this Agreement on the Required Notice by notice in writing to the Consultant given at any time except where inconsistent with the other terms of this Agreement
- 3.3 The Consultant shall be entitled to terminate this Agreement forthwith by notice in writing to the Client if the Client shall:
- 3.3.1 commit any serious or persistent breach of any of its obligations hereunder and (in the case of a breach capable of being remedied) shall have failed,

within 14 days after the receipt of a written request from the Consultant so to do, to remedy the breach (such request to contain a warning of the Consultant's intention to terminate);

- 3.3.2 pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect;
  - 3.3.3 make any voluntarily arrangement with its creditors or become subject to an administration order;
  - 3.3.4 have a receiver or administrative receiver appointed of it or over any part of its undertaking or assets; or
  - 3.3.5 cease, or threaten to cease, to carry on business
- 3.4 If any sum payable by the Client under this Agreement is not paid by the due date the Consultant shall be entitled to suspend provision of the Consultancy Services until such time as payment is made

#### **4 Duties**

- 4.1 The Consultant shall provide the Consultancy Services to the Client and perform such other duties in relation to the Project as may be mutually agreed from time to time
- 4.2 The Consultant shall devote to its obligations hereunder such of its time, attention and skill as may be necessary for the proper performance of those obligations
- 4.3 While the Consultant's method of work is its own, the Consultant shall comply with the reasonable requests of the Client and shall use its best endeavours to promote the interests of the Client in relation to the Consultancy Services

#### **5 Consultant's undertakings**

The Consultant warrants and undertakes to the Client that:

- 5.1 the Consultant and the Consultancy Participants will have the necessary skill and expertise to provide the Consultancy Services on the terms set out herein;
- 5.2 the Consultancy Materials will, so far as they do not comprise material originating from the Client, its employees, agents or contractors, be original works of authorship or works which the Consultant is entitled to utilise and the use or possession thereof by the Client or the Consultant will not subject the Client or the Consultant to any claim for infringement of any proprietary rights of any third party;
- 5.3 the Consultancy Services will be provided in a timely and professional manner and in accordance with the time schedules reasonably agreed by the Client, will conform to the standards generally observed in the industry for similar services and will be provided with reasonable skill and care;

#### **6 Client's obligations**

The Client shall:

- 6.1 ensure that its employees co-operate fully with the Consultant and the Consultancy Participants in relation to the provision of the Consultancy Services; and
- 6.2 promptly furnish the Consultant with such information and documents as it may reasonably request for the proper performance of its obligations hereunder

## **7 Personnel**

- 7.1 The parties shall each appoint a representative who shall have full authority to take all necessary decisions regarding the provision of the Consultancy Services (including the variation of this Agreement)
- 7.2 The parties shall procure their representatives to meet at regular intervals during the continuance of this Agreement to discuss and minute the progress of the Consultancy Services
- 7.3 The Consultant shall ensure that while any of the Consultancy Participants are on the Client's premises they will conform to the Client's normal codes of staff and security practice

## **8 Ownership of Project Materials**

The Consultant shall be entitled to all property, copyright and other intellectual property rights in the Consultancy Materials which shall remain the property of the Consultant except where specifically agreed to the contrary.

## **9 Fees and expenses**

- 9.1 The Client shall pay the Consultant for the time properly spent by the Consultancy Participants in providing the Consultancy Services at the charge-out rates specified above
- 9.2 In the event of the Client postponing the Commencement Date or the provision of any part of the services after the Commencement Date without giving at least 5 clear days notice to the Company the Company shall be entitled to charge at its charge out rates for any short notice
- 9.3 The Consultant shall be entitled at any time and from time to time to vary any or all of such charge-out rates to accord with its or its permitted sub-contractors' standard scale rates in force from time to time; Provided that no such variation shall have effect unless and until written notice thereof is given to the Client
- 9.4 The Consultant shall render monthly itemised invoices to the Client in respect of the said charges and shall show any Value Added Tax separately on such invoices. The Client shall not account to the Consultant for any charges save on receipt of such invoice
- 9.5 All charges payable by the Client shall, subject as aforesaid, be paid within 30 days after the receipt by the Client of the Consultant's invoice therefor
- 9.6 If it shall be necessary for any of the Consultancy Participants to visit the Client's

premises or make any other journeys in the course of providing the Consultancy Services then the Client shall reimburse the Consultant for all reasonable travelling and subsistence expenses properly incurred in so doing

- 9.7 The charges payable under this Agreement are exclusive of Value Added Tax which shall be paid by the Client at the rate and in the manner for the time being prescribed by law
- 9.8 If any sum payable under this Agreement is not paid within 7 days after the due date then (without prejudice to the Consultant's other rights and remedies) the Consultant reserves the right to charge interest on such sum on a day to day basis (as well after as before any judgment) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 2 per cent above the base rate of Barclays Bank plc (or such other London Clearing Bank as the Consultant may nominate) from time to time in force compounded quarterly or at the prescribed rate from time to time due under the Late Payment of Commercial Debts (Interest) Act 1998 whichever shall be greater. Such interest shall be paid on demand by the Client

## **10 Confidential information**

- 10.1 The Consultant shall not use or divulge or communicate to any person (other than those whose province it is to know the same or with the authority of the Client):
- 10.1.1 any confidential information concerning the products, customers, business, accounts, finance or contractual arrangements or other dealings, transactions or affairs of the Client [and its subsidiaries] which may come to the Consultant's knowledge in the course of providing the Consultancy Services;
- 10.1.2 the substance of any report, recommendation, advice or test made, given or undertaken by the Consultant in connection with its duties hereunder
- and the Consultant shall use its best endeavours to prevent the unauthorised publication or disclosure of any such information or documents
- 10.2 The Consultant shall ensure that its employees, agents and sub-contractors are aware of and comply with the confidentiality and non-disclosure provisions contained in this Clause and the Consultant shall indemnify the Client against any loss or damage which the Client may sustain or incur as a result of any breach of confidence by any of such persons
- 10.3 If the Consultant becomes aware of any breach of confidence by any of its employees, agents or sub-contractors it shall promptly notify the Client and give the Client all reasonable assistance in connection with any proceedings which the Client may institute against any such persons
- 10.4 The provisions of this Clause shall survive the expiration or termination of this Agreement but the restrictions contained in sub-clause (1) shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure by the Consultant, its employees, agents or sub-contractors

## **11 Assignment**

- 11.1 Save as provided in sub-clause 11.2 below, the Consultant shall not be entitled to assign or sub-contract any of its rights or obligations under this Agreement
- 11.2 The Consultant shall be entitled (subject to the prior written approval of the Client, which shall not be unreasonably withheld or delayed) to engage the services of independent contractors of its own to assist it with its duties hereunder

## *[ Optional clause ]* **12 Further Agreement**

In consideration of contributions made by the Consultant in and towards the acquisition of the work to which this Agreement relates the Client covenants with the Consultant that it will not engage any other person company consultant or any other organisation to carry out the work equivalent to that described as the Consultant's Services other than the Consultant in connection with the Client's intended contract referred to between itself and *[ insert as appropriate ]*

## **13 Restriction**

The Client agrees that during the term of this Agreement or any extension of it or for twelve months after its termination it shall not directly or indirectly:

- 13.1 on its own behalf or on behalf of or in conjunction with any other person solicit or assist in soliciting or deal with in competition with the Consultant, the customer or business of any client or prospective client of the Consultant with whom the Client has had any contact at the recommendation or introduction of the Consultant during or prior to the term of this Agreement, and
- 13.2 on its own behalf or on behalf of or in connection with any other person solicit or assist in soliciting away from the Consultant any individual who was during the term of this Agreement a senior employee, director, consultant or sub-contractor of the Consultant whether or not any such person would commit a breach of contract by reason of him ceasing to provide services to the Consultant

## **14 Effect of termination**

On the expiration or termination of this Agreement:

- 14.1 all rights and obligations of the parties under this Agreement shall automatically terminate except for such rights of action as shall have accrued prior thereto and any obligations which expressly or by implication are intended to come into or continue in force on or after such expiration or termination;
- 14.2 the Client shall pay the Consultant for all unpaid charges and reimbursable expenses accrued up to the date of expiration or termination;

## **15 Indemnity**

The Consultant shall indemnify the Client and keep the Client fully and effectively indemnified against any and all losses, claims, damages, costs, charges, expenses, liabilities, demands, proceedings and actions which the Client may sustain or incur or which may be brought or established against it by any person and which in any case arises out

of or in relation to or by reason of:

- 15.1 the negligence, recklessness or wilful misconduct of the Consultant, its employees, agents or sub-contractors in the provision of the Consultancy Services;
- 15.2 the breach of any of the warranties and undertakings contained in Clause 5 hereof;  
or
- 15.3 any unauthorised act or omission of the Consultant, its employees, agents or sub-contractors

## **16 Interpretation**

In this Agreement:

- 16.1 words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporate; and (in each case) vice versa;
- 16.2 any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns;
- 16.3 the headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

## **17 Notices**

All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid letter or facsimile transmission and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when despatched

## **18 Force majeure**

Neither party shall be liable for any delay in performing any of its obligations under this Agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using its best endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations

## **19 General**

The Consultant is an independent contractor and nothing in this Agreement shall render it an agent or partner of the Client and the Consultant shall not hold itself out as such. The Consultant shall not have any right or power to bind the Client to any obligation. This Agreement constitutes the entire understanding between the parties concerning the subject matter hereof and shall be governed by and construed in accordance with the laws of England. No waiver or amendment of any provision of this Agreement shall be effective

unless made by a written instrument signed by both parties. Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect

## **20 Entire Agreement**

This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and arrangements written or oral. The printed terms and conditions of any purchase order or other correspondence and documents of the Client issued in connection with this Agreement will not apply unless expressly accepted in writing by the Consultant

## **21 Mediation**

21.1 In this clause 'Mediation' shall mean mediation in accordance with the mediation procedure of IDR Europe Ltd or CEDR. Either party shall at its absolute discretion refer any difference or dispute which in any way relates to or arises out of this Agreement to Mediation under the auspices of either IDR Europe Ltd or CEDR ('the chosen ADR organisation') as a condition precedent to exercise any right to litigation

21.2 Once a party has elected for the chosen ADR organisation to handle a Mediation then there shall be no switch to the other body for the purposes of dealing with the dispute in question without the written agreement of both parties. The mediator shall be agreed upon by the parties, but failing such agreement within 10 days of one party requesting the appointment of a mediator and providing details of their proposed mediator, the mediator shall be appointed by the chief executive officer of the chosen ADR organisation from amongst trained mediators proposed by that organisation. Unless agreed otherwise the parties shall share equally the costs of the Mediation. The use of Mediation will not be construed to affect adversely the rights of either party should the Mediation not resolve the dispute in question