

Terms of Service

1. INTRODUCTION.

- 1.1 Azenby agrees to supply to the Client the Services set out in the Commercial Proposal/Statement of Works subject to these Terms of Service. Capitalised terms not defined in these Terms of Service shall have the meaning ascribed to them in the Commercial Proposal. The Client agrees that these Terms of Service shall at all times prevail and take precedence over any other terms the Client may seek to impose at any time including those referred to or included in any Client purchase order. No conduct by Azenby shall be deemed to constitute acceptance of any terms put forward by the Client and no terms and conditions at variance with these Terms of Service shall be binding on Azenby unless agreed to in writing by Azenby. In the event of any conflict between these Terms of Service and the Commercial Proposal the relevant provision in the Commercial Proposal will prevail and take precedence.

2. DURATION.

- 2.1 Azenby shall be engaged by the Client as provided in these Terms of Service for the period of time as set out in the Commercial Proposal.

3. PAYMENT.

- 3.1 Fees and payment terms in respect of the Services are set out in the Commercial Proposal. All Fees are exclusive of applicable VAT and any other similar sales or service taxes which will be shown separately on Azenby's invoices. In the event that the Client disputes any invoice, the Client will nevertheless pay any undisputed portion of the invoice in full by the due date and submit a documented claim for the disputed amount. Any dispute must be notified to Azenby in writing within 7 days of the date receipt of an invoice, failing which the Client will be deemed to have accepted payment in full as set out in the invoice. Azenby may without prejudice to its other rights charge interest on any outstanding undisputed amount at a rate of 1% per month. In the event that any amount is required to be deducted from any payment to Azenby for withholding tax or any similar tax, the amount payable shall be increased so that the amount received by Azenby after deduction of withholding tax or any similar tax is equal to the amount actually invoiced by Azenby.

4. WARRANTIES.

- 4.1 Azenby warrants that:
- (a) by providing the Services Azenby is not nor will Azenby come to be in breach of any contract, agreement, term, condition, obligation or other arrangement to which Azenby is a party; and
 - (b) the Services to be performed will be carried out with reasonable skill, care and diligence and in accordance with best industry practice but no liability is accepted by Azenby for any errors or omissions in the information or material provided by Azenby or provided to Azenby by the Client in the performance of the Services.
- 4.2 In entering into these Terms of Service and the Commercial Proposal, the Client acknowledges that it does not do so on the basis of, and does not rely on any representation, warranty, condition or other provision except as expressly provided in these Terms of Service and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

5. RELATIONSHIP BETWEEN THE PARTIES.

- 5.1 Azenby will perform the Services as an independent contractor. Nothing in these Terms of Service or in the performance of the Services by Azenby will be considered or construed to

create: (i) a partnership or joint venture between Azenby and the Client; (ii) any fiduciary duty owed by one party to the other party; (iii) a relationship of employer and employee between the parties; or (iv) any basis for any employee of a party to claim that he or she is an employee of the other party.

- 5.2 Azenby shall account for any income tax, value added tax and national insurance/social security contributions to the appropriate authorities. Azenby shall be responsible for payment of all taxes which Azenby is liable to pay and for making appropriate deductions and payments for tax and other statutory deductions and contributions in respect of the remuneration it pays to its personnel.

6. INTELLECTUAL PROPERTY.

- 6.1 The parties agree that all Intellectual Property conceived, written or produced by or on behalf of Azenby during the course of performing the Services shall vest in and belong to Azenby. For the purpose of these Terms of Service "Intellectual Property" shall mean all patents, trademarks, registered designs, design rights, semi-conductor topography rights, copyrights, database rights, rights in computer software, rights in confidential information, trade secrets, inventions and know-how, trade and business names, domain names, getups, logos and trade dress (in each case whether or not registered), any applications for or rights to apply for any of the above, any other intellectual property rights recognised in any part of the world and any accrued rights of action in respect of any of the above.
- 6.2 The Client shall at the request of Azenby, take all such steps and execute all such assignments and other documents as Azenby may reasonably require to ensure, that all the Intellectual Property vests in and belongs to Azenby and for the registration or protection of Azenby's rights in Intellectual Property.
- 6.3 Azenby grants to the Client a limited personal, non-exclusive, non-transferable and non-assignable worldwide license to materials and documents supplied to the Client in connection with the Commercial Proposal for use by the Client solely as contemplated in the Commercial Proposal. The materials and documents licensed hereunder are for the Client's internal use only and shall not be sub-licensed, distributed or otherwise made available to any other party without Azenby's prior written permission. In the event written permission is granted, all such materials and documents must be designated as materials and documents belonging to and owned by Azenby.

7. PERSONNEL.

- 7.1 Azenby will allocate suitable personnel with appropriate skill and experience levels to perform the Services. The Client acknowledges and agrees that existing personnel may be temporarily removed or replaced by Azenby for absences due to matters such as holidays, illness or accident or permanently replaced if such personnel leave Azenby. Azenby will use reasonable endeavours to provide any replacement for any personnel removed or replaced as above and shall ensure that replacement personnel undergo a suitable period of familiarisation with the Services so far as reasonably practicable. Azenby agrees to maintain a consistent skill and experience level among replacement personnel (which shall as a minimum have similar skills and experience as their predecessors).

8. NON-SOLICITATION.

- 8.1 The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of 6 months from the end of the Services solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any senior manager or executive of the other party who has worked in connection with the Services. Notwithstanding the foregoing, the provisions of this clause

8 shall not apply to any senior employee or executive of a party who responds to a general advertisement for employment.

9. ACCESS.

9.1 The Client shall allow Azenby such access to the Client's premises as is necessary to carry out the Services. Any Azenby personnel working at the Client's premises will comply with the Client's reasonable site instructions as notified to Azenby from time to time. The Client will provide a safe and secure working environment for Azenby's personnel while at the Client's premises.

10. TERMINATION.

10.1 Without prejudice to either party's other rights under these Terms of Service and at law, either party may terminate provision of the Services and these Terms of Service forthwith on written notice if the other:

- (a) commits a material breach of these Terms of Service or the Commercial Proposal and fails to remedy the material breach (if capable of remedy) within a reasonable time (not less than 21 days) specified in a written notice from the other party to do so; or
- (b) is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into voluntary or compulsory liquidation (other than for the purpose of amalgamation or reconstruction) or a receiver or administrator is appointed over its assets or if anything analogous to the foregoing occurs in any jurisdiction.

10.2 Upon termination of these Terms of Service or the Commercial Proposal for any reason whatsoever:

- (a) Azenby shall cease its performance of the Services and any sum due to Azenby under any provisions of these Terms of Service and the Commercial Proposal shall become immediately payable;
- (b) each party shall forthwith cease to use, either directly or indirectly, any confidential information of the other party and shall forthwith return or destroy at the other party's option any confidential information, documents and materials in its possession or control which belong to the other party; and
- (c) provided that Azenby has been paid any sum due to Azenby under any provisions of these Terms of Service and the Commercial Proposal, Azenby subject always to clause 6 will deliver up to the Client any work product completed by Azenby at the termination date and as contemplated under the Commercial Proposal.

11. CONFIDENTIALITY.

11.1 Each party shall keep in confidence any information, and shall procure that its employees, personnel, agents and subcontractors keep in confidence any information obtained under or in connection with the Services and these Terms of Service and shall not use or disclose any such information without the prior written consent of the other party. This clause 11 shall not apply to information which:

- (a) at the date of the Commercial Proposal and these Terms of Service is in the public domain;
- (b) after the date of date of the Commercial Proposal and these Terms of Service enters the public domain through no fault of the receiving party and not in breach of these Terms of Service;

- (c) was already known to the receiving party from a third party on the date of disclosure provided that such prior knowledge can be substantiated and proved by documentation;
 - (d) was already developed by the receiving party prior to the date of the Commercial Proposal and these Terms of Service without making use of the information, provided that such prior development can be substantiated and proved by documentation;
 - (e) is required to be disclosed to comply with any applicable law or government regulations or the requirements of a stock exchange on which a party is listed or applying to be listed requiring the disclosure of the information, provided the receiving party uses reasonable efforts to give the disclosing party reasonable advance notice of such required disclosure to enable the disclosing party to prevent or limit such disclosure.
- 11.2 Neither party shall be entitled to issue any announcement, communication, statement or press release regarding any aspect of these Terms of Service or the Commercial Proposal without the prior written approval of the other party, such approval not to be unreasonably withheld or delayed.
12. **LIABILITY.**
- 12.1 Nothing in these Terms of Service will exclude or limit either party's liability in respect of any claims for death or personal injury caused by the negligence of such party; or resulting from any fraud (including fraudulent misrepresentation) made by such party; or for which liability may not otherwise be lawfully excluded or limited.
- 12.2 Without prejudice to the Client's obligations to make payments to Azenby pursuant to the Commercial Proposal and these Terms of Service, neither party shall be liable to the other in contract, tort or otherwise, including any liability for negligence or breach of statutory duty, for any loss of revenue, business, anticipated savings, profits (whether or not in each case they are considered to be direct or indirect losses), corruption or destruction of data or for any indirect or consequential loss howsoever arising even if the other party is expressly advised of the possibility of such damage or loss.
- 12.3 Without prejudice to the Client's obligations to make payments to Azenby pursuant to the Commercial Proposal and these Terms of Service, the total aggregate liability of either party under these Terms of Service and in connection with the Commercial Proposal for direct damages for any one event or series of connected events shall in any event be limited to the total amount of Fees (less VAT) set out in the Commercial Proposal.
- 12.4 The Client will indemnify Azenby, its affiliates, respective officers, directors, employees, personnel and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs and expenses (including but not limited to reasonable legal fees) arising from Azenby's performance of the Services as contemplated under these Terms of Service and the Commercial Proposal.
13. **NOTICE.**
- 13.1 Notices under these Terms of Service shall not be valid unless in writing and sent to a party at its address as set out in the Commercial Proposal or by email and sent to a party at its address as set out in the Commercial Proposal. A party may change its notice details by serving notice on the other of the change in accordance with this clause 13.
- 13.2 In the absence of earlier receipt and, subject to clause 13.3, any notice served under these Terms of Service shall be deemed to have been duly served as follows:
- (a) if delivered personally, on delivery;

- (b) if sent by email, when an email is received in full;
 - (c) if sent by first class inland post, at 9.30 am on the second Business Day after the date of posting;
 - (d) if sent by airmail, at 9.30 am on the fifth Business Day after the date of posting.
- 13.3 Any notice served under these Terms of Service on a day which is not a Business Day or at any time after 5.30 pm on a Business Day shall be deemed to be served at 9.30 am on the next Business Day. For the purpose of this clause 13, "Business Day" means a day, other than a Saturday or a Sunday on which clearing banks are generally open for business in the City of London.
14. **GENERAL.**
- 14.1 The parties shall not assign or transfer any of their rights or obligations under these Terms of Service without the prior written consent of the other, such consent not to be unreasonably withheld or delayed. Azenby shall have the right to subcontract such portions of its obligations under these Terms of Service and the Commercial Proposal as Azenby deems appropriate provided that Azenby shall be responsible for the services of any such subcontractor as if Azenby had performed the subcontracted services itself.
- 14.2 These Terms of Service and the Commercial Proposal represents the entire agreement and understanding of the parties in relation to the subject matter hereof and supersede all prior understandings and representations, whether written or oral, and these Terms of Service and the Commercial Proposal and the Commercial Proposal may only be modified if such modification is in writing and signed by authorised representatives of both parties.
- 14.3 No variation of these Terms of Service or the Commercial Proposal shall be effective unless made in writing and signed by each of the parties.
- 14.4 If any provision or part of a provision of these Terms of Service shall be, or be found by any authority or court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms of Service or the Commercial Proposal, all of which shall remain in full force and effect.
- 14.5 Failure by either party to exercise or enforce any right conferred by these Terms of Service or the Commercial Proposal shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 14.6 A person who is not a party to these Terms of Service has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms of Service but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 14.7 These Terms of Service and the Commercial Proposal are governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising in relation thereto.
- 14.8 Neither the Client nor Azenby shall be liable for any failure or delay in performing their obligations under these Terms of Service or the Commercial Proposal where such failure or delay results from any cause that is beyond the reasonable control of that party including without limitation act of God, power failure, failure of communications providers, industrial action (not being industrial action in relation to the Client or Azenby), fire, flood, storms, earthquakes, outbreak of hostilities (whether or not war is declared), insurrection, riot, acts of terrorism, civil unrest or disturbance, governmental action or the action of other competent authorities or regulation or any other event that is beyond the control of the party in question.

- 14.9 Those clauses the survival of which is necessary for the interpretation or enforcement of these Terms of Service shall continue in full force and effect in accordance with their terms notwithstanding termination or expiry of these Terms of Service.