

## **Conditions of Business**

### **Consultancy Contract**

#### **1. Definitions**

- IFC:** In-Form Consult Ltd (IFC), a company registered in England (number 3131347), whose registered office is at C/O Shenward, Josephs Well Suite 2C, Hanover Walk, Leeds, LS3 1AB
- Client:** The party who is contracting IFC to perform the Service.
- Agreement:** These Conditions of Business
- Service:** The provision of consultancy on a time hire basis.
- Staff:** Any individual, including employees of a third party, provided by IFC to perform the Service.

#### **2. Service**

- 2.1 IFC shall perform the Service according to the provisions of the Agreement, and the Client shall pay to IFC all sums due for time spent in the performance of the Service.

#### **3. Staffing**

- 3.1 IFC will assign appropriately qualified Staff to perform the Service. If the Client concludes on reasonable and lawful grounds that any member of Staff provided by IFC is not appropriately qualified or is not producing work of an acceptable standard, the Client has the right to require IFC to substitute the person, provided IFC is not required to do anything which would cause it to be in breach of its legal obligations or to suffer any legal liability.
- 3.2 IFC may make holiday arrangements with the Staff in accordance with their entitlement, or require them to attend meetings or courses from time to time. When making such arrangements, IFC shall take reasonable steps to minimise disruption to the Service. IFC shall make no charge for any Staff absence due to these causes.
- 3.3 IFC may at its discretion and at any time remove anyone allocated by it to the Service, but shall endeavour to give prior notice and provide replacements of equivalent calibre.
- 3.4 Each party agrees that when its staff are employed on the premises of the other party they shall use all reasonable endeavours to ensure that its staff comply with such rules and regulations as are notified in writing to them for the conduct of its staff on those premises.

#### **4. Accommodation & Facilities**

- 4.1 If the Staff work on the Client's premises or premises other than IFC's, the Client shall ensure that such Staff are provided with suitable office accommodation. Such accommodation and services shall be readily accessible to any required computing facilities. The Client shall provide free of charge the items, facilities and services (if any) stated in this Agreement to be provided by the Client to the extent required by IFC.

#### **5. Charges**

- 5.1 Fee charges are based on time spent in connection with the Service by the Staff and charges will be made according to their respective rates applying during performance of the Service as notified from time to time by IFC to the Client.
- 5.2 Time spent by Staff on the Service shall be charged on a daily basis.
- 5.3 Staff are entitled to travel, hotel, subsistence and other incidental expenses in accordance with IFC's expense guidelines, a copy of which is available on request. Such expenses will be charged to the Client at cost, without mark-up.
- 5.4 Fees and expenses are subject to VAT, and all prices are specified exclusive of VAT.

#### **6. Payment**

- 6.1 Invoices shall be rendered monthly in arrears and payment of IFC's invoices shall be made by the Client within twenty eight days of the date of invoice.

- 6.2 Without prejudice to its other rights and remedies if any sum due from the Client under the terms of the Contract shall not be paid by the Client by the due date IFC may charge interest at the rate of two per cent per annum over the base rate of Barclays Bank PLC from time to time in force on the sum due in respect of the period from the due date to the date of actual payment.
- 6.3 If the Client shall fail to pay any sum by the due date IFC may, without prejudice to any other remedy, after giving the Client fourteen days' notice of its intention to do so, cease to supply the Service or any part thereof until the payment be made; in which case the expenses of IFC occasioned by such cessation and the subsequent resumption of work shall be charged to the Client.
7. **Non-Solicitation**
- 7.1 Each party agrees that during a period from the date of the Agreement to twelve months after its completion or termination it shall not employ or engage on any other basis or offer such employment or engagement to any of the other party's staff who have been associated with the provision of the Service without the other party's prior agreement in writing.
- 7.2 Each party agrees that if it employs or engages any person contrary to the provisions of Clause 7.1 above the party in default shall be liable to pay to the other party liquidated damages in an amount equal to the charge for two hundred and twenty two days' work by that person at his current daily fee rate. A day, for these purposes, is deemed to be 7.5 hours.
8. **Procurement**
- Where IFC procures hardware, firmware or software in the performance of the Services, it shall do so exclusively as agent of the Client and IFC shall have no responsibility for the quality or functionality of such hardware, firmware or software.
- 8.2 In relation to consultancy in respect to the procurement of hardware, firmware or software IFC's only responsibility shall be that stated in Clause 3.1.
9. **Breach**
- 9.1 If either party shall commit a substantial breach of the Agreement and fails to remedy such breach within twenty-eight days of receiving written notice from the injured party requiring such remedy, becomes insolvent or is unable to pay its debts or commits an act of bankruptcy or goes or is put into liquidation (except solely for amalgamation or reconstruction) or if an administrator or administrative or other receiver is appointed over any part of a party's business or assets, or enters into any composition or other arrangement with its creditors generally, the other party may (without prejudice to its other rights or remedies) suspend and/or terminate at its option the Agreement forthwith on written notice. Exercise of rights under this clause will be without liability for any loss or damage suffered by the party in breach.
10. **Confidentiality**
- 10.1 Neither IFC nor the Client shall during the provision of the Service and for five years thereafter disclose to a third party (except to the extent necessary to perform the Service or required by law) any material received or obtained from the other party hereto and identified in writing by that other party as confidential. Each party shall take all reasonable steps to ensure that its staff comply with this clause.
- 10.2 The obligation of confidentiality set out in clause 10.1 shall not apply to material which is or becomes public knowledge other than through breach of this clause, or is independently developed by a party hereto, or is received from a third party who has full right to disclose the same, or is already in its possession with full right to disclose the same before receipt from the other party hereto.
- 10.3 Nothing in the Agreement shall prevent IFC using for any purpose any know-how or experience including programming tools, skills and techniques gained or arising from the performance of the Service.
- 10.4 IFC may seek, and the Client shall not unreasonably withhold, permission to publicise IFC's involvement in provision of the Service. Such publicity may include without limitation press releases, case histories and the like.

**11. Cancellation**

- 11.1 The Client may cancel the Service at any time by giving four weeks written notice to IFC.
- 11.2 Upon giving notice, a cancellation charge shall immediately become due of an amount equal to the fees that would otherwise be payable to IFC if the Staff then assigned full time to the Service had worked throughout the period of notice.

**12. Limitation of Liability**

- 12.1 To the extent that it results from the negligence of IFC, its employees or sub-contractors in connection with the Agreement and subject to Clause 12.3, IFC shall indemnify the Client against liability for personal injury (including death) or for direct physical damage to the Client's tangible property.
- 12.2 IFC shall not be liable for any indirect or consequential losses, damage, costs or expenses of any kind whatsoever including without limitation the losses consequent on loss of or corruption to data and economic loss such as loss of production, loss of profits or of contracts. The Client will be responsible for the usefulness of the Service and its possible effects on its other activities.
- 12.3 IFC's total liability under or in connection with the Agreement (whether in contract, tort or otherwise) is limited in respect of each event or series of connected events to:-
- (a) £250,000 in respect of physical damage to or loss of tangible property;
  - (b) In any other case not falling within (a) above (and excluding negligence resulting in death or injury for which no limit applies) the greater of £250,000 or 100% of all sums received under the Agreement by IFC from the Client.

**13. Force Majeure**

- 13.1 Neither party hereto shall be liable for any delay or failure to meet its obligations (other than a payment obligation) under the Agreement due to any cause outside its reasonable control.

**14. Invalid Terms**

- 14.1 If any part, term or provision of the Agreement, not being of a fundamental nature, be held illegal or unenforceable, the validity or enforceability of the remainder of the Agreement shall not be affected.

**15. Entire Agreement**

- 15.1 The Agreement is the complete and exclusive statement of the agreement between the parties hereto and supersedes all prior agreements, oral or written, and all other communications between the parties concerning the subject matter of the Agreement. The Client acknowledges that no reliance is placed on any representation, warranty, collateral contract or other assurance made but not embodied in the Agreement and waives all rights and remedies which, but for this Clause, it would have arising from any such representations, warranty, collateral contract or other assurance; provided that nothing in this sub-clause shall limit or exclude any liability for fraud.
- 15.2 Save as expressly provided in this Agreement, no representation, warranty or condition, express or implied, statutory or otherwise, as to condition, quality, performance, merchantability or fitness for purpose is given or assumed by IFC in respect of the Service and all such representations, warranties and conditions are excluded save to the extent that such exclusion is prohibited by law.

**16. Notices**

- 16.1 All notices required or permitted to be given under the Agreement shall be in writing and shall be sent by letter, telex, fax or delivered by hand to the registered office address or such other address as the receiving party may from time to time designate.

**17. Agreement Variation**

- 17.1 The Agreement may only be modified by written agreement signed by a company Director on behalf of the Client and IFC.

18. **Waiver**

- 18.1 The failure of either party hereto at any time to enforce any provision of the Agreement shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or be held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself. Any waiver to be effective must be in writing.

19. **English Law**

- 19.1 The Agreement shall be construed in accordance with and governed by the Law of England and each party hereto agrees to submit to the exclusive jurisdiction of the English Courts.

In witness whereof this Agreement is signed

for and on behalf of IFC

by .....

(Name) .....

Date .....

for and on behalf of the Client

by .....

(Name) .....

Date .....