

Terms & Conditions

In these terms and conditions, "the Consultant" is Calba Limited, registered in Scotland (SC141565), with registered office Gyleview House, 3 Redheughs Rigg, Edinburgh, EH12 9DQ, who has offered services and pricing detailed in a quotation, proposal, email, or any other documentation, herein referred to as the "Quotation". The recipient of the Quotation is "the Client". Collectively "the Parties" or individually the "Party".

1. The Agreement

- 1.1 The Agreement made by the Parties comprises of the Quotation, any email communications relating to the Quotation; any other agreements made by the Parties relating to the Quotation, verbal or written, and these terms and conditions.
- 1.2 The Agreement shall be deemed accepted by the Client upon the first of (i) the Client's written or verbal acceptance of the Quotation or part thereof, (ii) the Client's agreement to commence work, (iii) the Consultant starting work or (iv) the Client's payment of any agreed fee.
- 1.3 Variations or additions to the Agreement can be made. However, both Parties must agree to the variation or additions.

2. Provision of Services and Deliverables

- 2.1 The Consultant undertakes that it will perform the services and supply the deliverables described in the Quotation ("**the Services**") with reasonable skill and care and in a good and workmanlike manner.
- 2.2 The Consultant will use staff with appropriate skills and experience for the provision of the Services.
- 2.3 The Consultant agrees to deliver the Services within a reasonable timescale. Both Parties will use all reasonable endeavors to meet any target date or schedule referred to in the Agreement ("**Date**").

3. Client's Obligations

The Consultant may need access to the Client's facilities, information, tools and resources for and during the provision of the Services. If so requested by the Consultant, the Client, without charge to the Consultant, will provide access to these to the extent reasonably requested by the Consultant and shall co-operate with the Consultant to the extent reasonably required to achieve the objectives set out in the Agreement. The Client shall further make decisions and inform the Consultant of the results of those decisions when the Consultant reasonably requests it to do so for the Consultant's performance of the Services.

4. Fees and Payment

- 4.1 The Agreement sets out the proposed fees, costs and expenses for the Services ("**the Price**"). Fees based on time and materials or on an estimate do not constitute a fixed price. The Consultant may increase the Price to reflect any variation requested by the Client.
- 4.2 Unless otherwise agreed, the minimum fee for any onsite services is one day and the minimum fee for any offsite services is one hour.
- 4.3 All fees, costs and expenses referred to in the Agreement are exclusive of VAT, sales and similar taxes of any kind.
- 4.4 Unless otherwise set out in the Quotation, the Price shall be payable in two installments as follows: (i) as to 50%, on acceptance of the Agreement; and (ii) as to 50% on completion of the Services.
- 4.5 Unless otherwise agreed in writing, the Client shall pay all fees, costs and expenses related to the Services within 30 days of presentation of the Consultant's invoice.
- 4.6 If any invoice is not paid in full within 30 days from presentation, the Consultant may suspend performance of the Services and / or charge interest at the rate provided by the Late Payment of Commercial Debts (Interest) Act 1998 on any overdue amount from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

5. Limitations and Exclusions

- 5.1 Each Party accepts liability without limit for death or personal injury to any person due to its negligence or the negligence of its employees.
- 5.2 In respect of any liability other than those falling within clause 5.1 above and subject to clause 5.4, each Party's total liability arising out of or in connection with the Agreement shall not exceed in aggregate 100% of the total fees payable by the Client under this Agreement.
- 5.3 Neither Party shall in any circumstances be liable to the other whether in contract, tort (including negligence) or otherwise for any loss of profit, loss of contracts, loss of benefit, loss of production, loss of availability, loss of data, loss of anticipated savings, loss of reputation, loss of goodwill or loss of use suffered or incurred directly or indirectly by the other Party, any consequential, indirect or special loss or damage howsoever arising and of whatsoever nature or any punitive or exemplary damages.
- 5.4 Nothing in this Clause 5 shall affect or limit the Client's obligation to pay sums properly due under the Agreement.
- 5.5 The express terms of this Agreement shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.
- 5.6 The Consultant shall have no liability to the Client to the extent that such liability would not have arisen but for a breach by the Client of its obligations under the Agreement and without limiting the foregoing the Consultant shall not be liable for any failure to meet any Date if such failure would not have occurred but for the Client's failure to meet any Date or for the Client's breach of the Agreement.
- 5.7 Nothing in this Agreement shall limit a Party's liability for fraud, fraudulent misrepresentation or deceit.

6. Intellectual Property

- 6.1 Intellectual Property ("**IP**") means patents, rights to inventions, registered designs, copyright and related rights, database

rights, design rights, topography rights, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual property rights of any nature including all applications, all rights to apply for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

6.2 IP and rights to IP which the relevant Party can demonstrate is either already held by it at the date of the Agreement or at any time on or before the relevant time has been acquired or developed by it after the date of this Agreement entirely independently of the Services and of use of any Confidential Information of the other Party, and all modifications thereto and derivative versions thereof created at any time ("**Background IP**") shall remain the property of that Party.

6.3 The Client hereby grants to the Consultant a royalty-free, non-exclusive, non-transferable licence to use the Client's Background IP as required to allow the Consultant to perform its obligations under the Agreement.

7. Confidentiality

The Consultant will 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 make use, any information relating to the Client's technology, technical processes, business affairs, or finances, or any such information relating to subsidiaries, suppliers, customers or clients of the Client where knowledge or details of the information was received with reference to the Contract, except as may be necessary for the proper fulfillment of the Quotation, but these obligations of confidence will not apply to any information which (a) is in the possession of and is at the free disposal of the Consultant or is published or is otherwise in the public domain prior to the receipt of such confidential information or other information from the Client, (b) is or becomes publicly available on a non-confidential basis through no fault of the Consultants.

8. Termination

8.1 Either Party may at any time and without cause terminate the Agreement on giving 30 days' written notice of termination to the other Party.

8.2 Upon termination under clause 8.1, the Client shall pay the Consultant all sums due in respect of the Services provided and expenses incurred prior to termination.

8.3 Either Party may terminate the Agreement forthwith by written notice if the other Party commits an act of bankruptcy or goes into liquidation or is put into liquidation (other than for a proper commercial purpose and whilst solvent) or a receiver is appointed or an administration order is made in respect of it.

8.4 Either Party may terminate the Agreement forthwith by written notice if the other Party commits a material breach of the Agreement and has failed to remedy the breach within 30 days of receipt of a written notice from the other Party identifying that the breach has occurred.

8.5 Termination shall not affect any accrued rights or liabilities arising out of the Agreement.

9. Non-Solicitation

The Client shall not, either during the provision of the Services or for a period of six months from completion, employ or offer employment to any member of the Consultant's project team unless agreed in writing with the Consultant.

10. Publicity

12.1 The Client agrees that the Consultant may refer to the Client on its client lists.

12.2 Neither Party shall make any statement about the Services provided to the press or the public without the other Party's written consent.

11. Force Majeure

Neither the Consultant nor the Client will be liable for any failure to perform their obligations, or delay in the performance of their obligations, if the failure or delay is due to causes outside their reasonable control.

12. Applicable Law

The Agreement shall be governed by and construed in accordance with the laws of Scotland and any dispute arising out of or in connection with the Agreement will be subject to the exclusive jurisdiction of the Scottish Courts.