

**CAD Collective Limited – PROFESSIONAL SERVICES – TERMS AND CONDITIONS****1 DEFINITIONS**

1.1 In these Terms, unless the context otherwise requires, the following expressions have the following meanings:

“**CAD Collective**” means CAD Collective Limited, a company registered at 14 Denning Close, Taunton, Somerset, TA1 4NN.

“**Agreement**” means the agreement between the Customer and CAD Collective for the provision of the goods and services comprising the Terms and the Proposal.

“**Applicable Services**” means the general consultancy, requirements analysis, design, build, configuration, implementation, project management and all related services together with the Licensed Software and Equipment to be used by CAD Collective or its sub-contractors pursuant to this Agreement as more particularly described in the Proposal.

“**Design**” means Service Materials documenting the technical parameters and characteristics of the Applicable Services pursuant to this Agreement as more particularly described in the Proposal.

“**Equipment**” means the equipment (if any) agreed to be used by the CAD Collective from the Customer (including any part or parts of it) as set out in the Proposal.

“**Force Majeure Event**” means an act, event, omission or accident beyond the reasonable control of CAD Collective including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of CAD Collective or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, act of terrorism, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors and inability to obtain services from third parties, where CAD Collective has taken all reasonable steps to obtain such services.

“**Implementation Plan**” means, if applicable, information included in the Proposal setting out the tasks and the associated time schedule necessary to provide the goods and services as part of the Agreement.

“**Intellectual Property Rights**” means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or not) and all applications for the same which may now, or in the future, subsist anywhere in the world, including the right to sue for and recover damages for past infringements.

“**Licensed Software**” means any third party software that the CAD Collective owns a License too, which is allowed to be legally used in conjunction with this Agreement.

“**Proposal**” means the detailed summary of the services to be provided by CAD Collective to which these Terms are appended.

“**Service Materials**” means any and all materials developed, written or prepared by CAD Collective or their sub-contractors, in relation to the CAD Collective Services (whether individually, collectively or jointly with the Customer and on whatever media) which it is required to deliver to the Customer pursuant to the Applicable Services, including, without limitation, any and all drawings, reports, studies, data, diagrams, charts, specifications and all drafts thereof and working papers relating thereto, but excluding ordinary correspondence passing between CAD Collective and the Customer.

“**Service Participants**” means those employees and permitted sub-contractors of CAD Collective engaged from time to time in providing the Applicable Services and any employees of any such sub-contractors who are also engaged.

“**Terms**” means these terms and conditions.

**2 APPLICABLE SERVICES**

2.1 The Customer hereby agrees to engage CAD Collective to provide the Applicable Services and CAD Collective hereby agrees to provide the Applicable Services to the Customer at the rates or for the sum set out in the Proposal and otherwise upon these Terms.

2.2 The Agreement is not an exclusive arrangement, and subject to CAD Collective's obligations in this Agreement, including, without limitation, confidentiality, nothing in this Agreement shall operate to prevent CAD Collective from engaging in other consultancy or project management activities.

2.3 The Applicable Services are provided at the Customer's request and the Customer accepts that it is responsible for verifying that the Applicable Services are suitable for its own needs.

2.4 The Customer hereby authorises CAD Collective, its employees and permitted sub-contractors and employees of such sub-contractors to have such access to the Customer's computer systems as is necessary in order to perform the Applicable Services.

**3 TERM**

3.1 This agreement shall commence on the date stated in the Proposal and shall continue (subject to early termination in accordance with this Agreement) until the Applicable Services are completed.

3.2 The Customer may terminate the Agreement (including the licence of any software) for convenience by giving CAD Collective 30 (thirty) days notice.

3.3 Either party may terminate the Agreement (including the licence of any software) in the event that:

(a) the other is in serious breach of the Agreement provided such breach (where capable of remedy) has not been remedied within 30 (thirty) days of receipt of written notice from the terminating party specifying such breach; or

(b) the other party passes a resolution, or the court makes an order, that such other party be wound up otherwise than for the purpose of bona fide reconstruction, or amalgamation, or a receiver, manager, administrative receiver or administrator on behalf of a creditor is appointed in respect of such other party's business or any part thereof, or circumstances arise which entitle the court, otherwise than for the purpose of a bona fide reconstruction or amalgamation, to make a winding-up order;

(c) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt;

(d) the other party ceases, or threatens to cease, to trade; or

(e) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

3.4 If any sum payable by the Customer under this Agreement is not paid by its due date CAD Collective shall be entitled to suspend (without prejudice to its other rights and remedies) provision of the Applicable Services until such time as payment is made.

3.5 Any termination of the Agreement shall be without prejudice to any other rights or remedies of either party under the Agreement or otherwise and all such rights are cumulative. Any such termination shall not affect any accrued rights or liabilities of either party at the date of termination.

#### 4 CAD COLLECTIVE'S UNDERTAKINGS

4.1 CAD Collective warrants and undertakes to the Customer that:

- (a) so far as CAD Collective is aware, the use or possession of the Service Materials by the Customer, so far as they do not comprise material originating from the Customer, its employees, agents or contractors, will not subject the Customer to any claim for infringement of any proprietary rights of any third party;
- (b) the Applicable Services will be provided in a timely and professional manner and CAD Collective shall use its reasonable endeavours to provide the same in accordance with the time schedules reasonably stipulated by the Customer; and
- (c) the Applicable Services will conform to the standards generally observed in the industry for similar services and will be provided with reasonable skill and care.

4.2 No announcement or publicity concerning the Applicable Services or any matter ancillary thereto shall be made by CAD Collective without the prior written consent of the Customer.

#### 5 CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) make available to CAD Collective such office and secretarial services as may be necessary for its work under this Agreement;
- (b) ensure that its employees co-operate fully with CAD Collective and the Service Participants in relation to the provision of the Applicable Services; and
- (c) promptly furnish CAD Collective with such information and documents as it may reasonably request for the proper performance of its obligations hereunder.

5.2 The Customer hereby undertakes and warrants that any computer systems which the Service Participants are required to use, access or modify are legally licensed to the Customer or are the Customer's own property and that such activities by the Service Participants in carrying out the Applicable Services will not infringe the rights of a third party. The Customer agrees to indemnify and keep indemnified CAD Collective in respect of any losses, costs, damages, claims and/or expenses incurred by CAD Collective due to third parties' claims arising out of any such activities.

#### 6 INTELLECTUAL PROPERTY

6.1 CAD Collective hereby grants an indefinite, non-exclusive licence in respect of its copyright and other intellectual property rights in the Service Materials, to the Customer to use, modify and adapt such Service Materials with the intent that such licence shall take effect on any such copyright or other intellectual property rights coming into existence.

6.2 At the request and expense of the Customer, CAD Collective shall do all such things and sign all documents reasonably necessary to enable the Customer to obtain the rights specified in Clause 6.1 in the Service Materials.

6.3 Upon request by the Customer, and in any event upon the expiration or termination of the Applicable Services, CAD Collective shall at its expense promptly deliver to the Customer all copies of the Service Materials then in CAD Collective's custody, control or possession provided the Customer is not in default of its payment obligations.

6.4 CAD Collective shall be fully entitled to use in any way it deems fit any skills, techniques, concepts or know-how acquired,

developed or used in the course of performing the Applicable Services and any improvements to CAD Collective's existing products made or developed during the course of the Applicable Services, subject to CAD Collective's obligations of confidence hereunder.

6.5 The provisions of this clause shall survive the expiration or termination of the Agreement.

#### 7 FEES AND EXPENSES

7.1 The Customer shall, for the time properly spent by the Service Participants in providing the Applicable Services, pay CAD Collective either the sum specified in the Proposal or an amount calculated in accordance with the charge-out rates specified in the Proposal (as applicable).

7.2 Where the Applicable Services are undertaken by reference to daily rates, a working day shall comprise 7.5 (seven and a half) hours between 9.00hrs and 17.00hrs on normal business weekdays (Monday to Friday).

7.3 Where the Applicable Services are undertaken by reference to hourly rates, the hourly charge-out rates of any new Service Participants which CAD Collective wishes to use from time to time shall be agreed in writing with the Customer, such agreement not to be unreasonably withheld or delayed.

7.4 CAD Collective shall be entitled at any time and from time to time to vary any or all of such hourly 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 Customer.

7.5 Daily and Hourly rates will be set out in the Proposal and Agreement.

#### 8 PERSONNEL

8.1 The parties shall each appoint a representative who shall have full authority to take all necessary decisions in respect of such party's obligations regarding the provision of the Applicable Services as applicable and described in the Proposal.

8.2 The parties shall procure their representatives to meet at regular intervals during the continuance of the Applicable Services to discuss and minute progress of the Applicable Services.

8.3 The Customer shall be entitled to request and obtain, in its discretion, the removal and replacement (upon reasonable notice) of any of the Service Participants which it may designate; provided that the Customer shall not exercise such right frivolously or vexatiously.

8.4 CAD Collective shall ensure that while any of the Service Participants are on the Customer's premises they will conform to the Customer's normal and reasonable codes of staff and security practice.

#### 9 CHARGES

9.1 CAD Collective shall render itemised invoices to the Customer in respect of said fees and expenses and shall show any sales taxes (including Value Added Tax) separately on such invoices. The charges payable under the Agreement are exclusive of such sales taxes which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.

9.2 Once an Agreement has been put into place, there will be a deposit, payable to CAD Collective of 15% (fifteen percent) before commencement of work.

9.3 All charges payable by the Customer shall be due and payable within 30 (thirty) days (unless otherwise stated in the Proposal) after the date of CAD Collective's invoice.

9.4 All prices quoted in this Agreement are exclusive of expenses reasonably incurred by CAD Collective in the performance of this Agreement (unless otherwise stated in the Proposal), the

cost of which shall be reimbursed by the Customer on demand by CAD Collective from time to time.

9.5 If any sum payable under this Agreement is not paid within 7 (seven) days after the due date then (without prejudice to CAD Collective's other rights and remedies) CAD Collective reserves the right to charge interest on such sum on a day to day basis (after as well as before such judgement) from the date or last date for payment thereof to the date of actual payment (both dates inclusive) at the rate of 2 (two) per cent above the base rate of Lloyds plc (or such other London Clearing Bank as CAD Collective may nominate) from time to time in force compounded quarterly. Such interest shall be payable by the Customer on demand.

9.6 If the Customer cancels or reschedules the Applicable Services prior to them commencing then (without prejudice to CAD Collective's other rights and remedies) the Customer shall pay on demand CAD Collective's costs, expenses and losses due to such cancellation or rescheduling.

## 10 LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of CAD Collective (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Agreement; and
- (b) any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

10.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law.

10.3 Nothing in these conditions excludes or limits the liability of CAD Collective for:

- (a) death or personal injury caused by CAD Collective's negligence; or
- (b) fraud or fraudulent misrepresentation.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) CAD Collective shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss or corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) CAD Collective's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited to a maximum amount which does not exceed £1,000 or the aggregate value of the Applicable Services, whichever is the greater.

10.5 CAD Collective shall not be liable in any way for any losses caused by the Customer's failure to perform its obligations under the Agreement (without limitation) any failure of the Customer to

make adequate provision for recovery of lost or corrupted data, files or software.

10.6 Time shall not be of the essence in the performance of CAD Collective's obligations under this Agreement. Any dates or timescales contained in this Agreement, the Proposal or attachments issued to the Customer at any point in respect of delivery or installation of the Applicable Services or items to be supplied hereunder (including software) are estimates only and whilst CAD Collective shall use its reasonable endeavours to meet such dates or timescales CAD Collective does not warrant that they can be met.

10.7 The express warranties given in this Agreement are in lieu of all other warranties, conditions and terms implied by statute, common law or otherwise, all of which are hereby excluded.

## 11 INSURANCE

11.1 The Company shall effect and maintain adequate insurance cover at its own cost with a reputable insurance company to cover the liability accepted by it under the terms of the Agreement and shall, at the Customers's reasonable request, produce reasonable evidence of the insurance policy.

## 12 CONFIDENTIALITY

12.1 Subject to Clauses 12.2 and 12.3 and save as otherwise expressed in the Agreement, neither party hereto (the "recipient party") shall during the term of this Agreement or thereafter disclose to any person or use for any purpose any information obtained from the other (the "disclosing party") in connection with the Agreement but the recipient party may:

- (a) disclose any such information to its reasonable officers and employees who require such disclosure where bona fide necessary for the proper performance of their duties; and
- (b) use such information in the proper exercise of its rights and the performance of its obligations under the Agreement.

12.2 The recipient party shall use its reasonable endeavours to minimise the risk of unauthorised disclosure or use by its employees and officers of information received from the disclosing party.

12.3 The restrictions on use and disclosure under Clause 12.1 shall not apply to any information which the recipient party can prove:

- (a) was already known prior to its receipt thereof from the disclosing party;
- (b) was subsequently disclosed to it lawfully by a third party who did not obtain the same (whether directly or indirectly) from the disclosing party; or
- (c) was in the public domain at the time of receipt by the recipient party or has subsequently entered into the public domain other than by reason of breach of the provisions of this Clause 12 or any obligation of confidence owed by the recipient party to the disclosing party.

## 13 NO POACHING

13.1 During the period whilst the Applicable Services are being provided and for a period of 12 months thereafter neither party shall employ directly or indirectly or through any subsidiary or holding company (as defined in section 1159 of the Companies Act 2006 as amended) or offer employment to any person employed or acting on behalf of the other who has (at the date of such offer of employment) worked or been designated to work in the provision on the Applicable Services.

13.2 If either party is in breach of this Clause 13.1, such party (recognising that the other will suffer substantial damage) shall pay to the other by way of liquidated damages and not by way of penalty a sum equal to double the then current annual salary of the employee concerned.

## 14 EFFECT OF TERMINATION

14.1 On the expiration or termination of this Agreement:

- (a) 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 after such expiration or termination;
- (b) the Customer shall pay CAD Collective for all unpaid charges and reimburse expenses accrued, and if the Customer terminates for convenience the Customer shall pay for CAD Collective's unavoidable and reasonable commitments necessary and solely incurred in performing the Applicable Services up to the date of expiration or termination; and
- (c) CAD Collective shall give the Customer, at its request, all reasonable co-operation in transferring all subcontracts made by CAD Collective hereunder to the extent that sub-contractors approve and provided that CAD Collective is fully released from its obligations in relation thereto.

## 15 IMPLEMENTATION PLAN AND DELAYS

15.1 Where an Implementation Plan is agreed and appended to this Agreement and subject to Clause 10.6, CAD Collective undertakes to use its reasonable endeavours to complete each element of the Applicable Services by the date specified in the Implementation Plan.

15.2 If CAD Collective is prevented or delayed from performing any of its obligations under this Agreement by reason of any act or omission of the Customer then, notwithstanding anything else contained in this Agreement:

- (a) if as a result any element of the Service Materials is not completed by the date specified in the Implementation Plan (where one is agreed) or by any extended date granted pursuant to any provision of this Agreement then any part payment due to be paid on the completion of that element shall remain due for payment on the scheduled date for such completion (taking into account any extension of time granted pursuant to any provision of this Agreement);
- (b) the Customer shall pay to CAD Collective a reasonable sum in respect of any additional time spent and materials and computer time used by its personnel in rectifying any errors in the Service Materials caused by such act or omission of the Customer including without limitation the provision of any incorrect or inadequate information or data by the Customer; and
- (c) the Customer shall pay to CAD Collective all other reasonable costs, charges and losses sustained or incurred by CAD Collective as a result of such act or omission (and for which CAD Collective is not compensated pursuant to Clauses 15.2 (a) and (b) above).

15.3 CAD Collective shall notify the Customer in writing of any claim which it may have under Clause 15.2 giving such particulars thereof as it is then able to provide.

## 16 ALTERATIONS

16.1 If at any time the Customer requires CAD Collective to alter all or any part of the Service Materials and/or any other deliverable hereunder the Customer shall provide CAD Collective with full written particulars of such alterations and with such further information as CAD Collective may reasonably require. CAD Collective may suggest alterations to the Customer at any time which the Customer may then use as the basis for a request under this clause.

16.2 CAD Collective shall then submit to the Customer as soon as reasonably practicable a written estimate for such alterations specifying what changes (if any) will be required to the charges hereunder and the Implementation Plan (if applicable) and what adjustments will be required to the Design (if applicable).

16.3 Upon receipt of such estimate the Customer may elect either:

- (a) to accept such estimate in which case this Agreement shall be amended in accordance therewith;
- (b) to withdraw the proposed alterations in which case this Agreement shall continue in force unchanged (subject to Clause 16.4 below).

16.4 CAD Collective shall be entitled to make a reasonable charge for considering such alterations and preparing the said estimate and if the Customer's request for such alterations is subsequently withdrawn but results in a delay in the performance of the Applicable Services then CAD Collective shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay.

16.5 CAD Collective shall not be obliged to make any alterations to the Service Materials save in accordance with the aforesaid procedure.

## 17 TESTING AND ACCEPTANCE

17.1 Where the Design has been agreed within the Proposal or developed subject to this Agreement, during the period of 14 (fourteen) days after the final elements of the Service Materials (excluding any time during which CAD Collective is correcting any defects pursuant to this clause) ("the Acceptance Period") the Customer may reject the Service Materials and terminate this Agreement and the licence in respect of the Service Materials, by giving written notice of termination to CAD Collective and returning the Service Materials and its associated documentation to CAD Collective in the event that:

- (a) the Customer can show that the Service Materials fail to meet the Design other than by reason of a minor defect not materially affecting functionality; and
- (b) CAD Collective fails to correct such failure within a reasonable time of notification from the Customer to correct such failure.

17.2 Unless such notice of termination is received by CAD Collective in respect of the Service Materials, prior to the end of the Acceptance Period, the Service Materials shall be deemed accepted at the end of the Acceptance Period.

17.3 In the event that the Customer rejects the Service Materials pursuant to Clause 17.1, upon receipt of the returned Service Materials and documentation from the Customer, CAD Collective shall refund an amount equal to any monies paid to CAD Collective by the Customer in respect of such Service Materials. The rights of rejection and refund in this clause are for the sole remedy of the Customer for any failure of the Service Materials to so comply with the Design.

17.4 Notwithstanding the provisions of Clauses 17.1, 17.2 and 17.3, the Service Materials shall be deemed to be accepted upon issue of such Service Materials by the Customer in a "construction" environment and the sole remedy of the Customer for any error or defect of the Service Materials in such case shall be the obligations of CAD Collective under Clause 18.

## 18 WARRANTY

18.1 CAD Collective warrants that (where the Design has been agreed) the Service Materials will, after the Acceptance Date, provide all material facilities and functions set out in the Design.

18.2 If CAD Collective receives written notice from the Customer after the Acceptance Date of any breach of the warranty in Clause 18.1 then CAD Collective shall at its own expense and within a reasonable time after receiving such notice remedy the defect or error in question provided that CAD Collective shall have no liability or obligations under the said warranty unless it shall have received written notice of the defect or error in question no later than the expiry of 90 days after the Acceptance Date.

18.3 If CAD Collective remedy any such defect or error in accordance with Clause 18.2 it shall be the Customer's sole remedy in respect of such breach.

18.4 CAD Collective shall not be liable for any breach of the warranty in Clause 18.1 by reason of any error or defect in Customer or third party software used with the Service Materials and/or any error or defect in the Equipment (without prejudice to any rights of the Customer under Clause 18.1).

## 19 INTERPRETATION

19.1 In this Agreement:

- (a) Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- (b) Words importing the singular include plurals, words importing to any gender include every gender and words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;
- (c) Any reference to a party to this Agreement includes a reference to its successors in title and permitted assigns; and
- (d) The headings to the Clauses are for ease of reference only and shall not affect the interpretation of construction of this Agreement.

## 20 FORCE MAJEURE

20.1 CAD Collective shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

20.2 If the Force Majeure Event prevents CAD Collective from providing any of the Applicable Services for more than four weeks, CAD Collective shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the Customer.

## 21 GENERAL

21.1 CAD Collective shall be entitled to engage the services of independent contractors of its own to assist with its duties hereunder; provided that CAD Collective:

- (a) Shall not be relieved from any of its obligations hereunder by engaging any such independent contractor; and
- (b) Shall secure binding obligations from any such independent contractor so as to ensure that CAD Collective can comply with the obligations under this Agreement including, in particular, its obligations under Clause 12 hereof.

21.2 All notices to be given under the Agreement shall be in writing in English and left at or sent by first class registered or recorded delivery mail, emailed 'important' or fax to the appropriate address contained within the Proposal or left at or sent to such other address as the party concerned may from time to time designate by notice pursuant hereto. Any such notice shall be deemed given:

- (a) At the time when the same left at the addressee's address;
- (b) On the second customary working day in the addressee's country after the same shall have been properly posted; or
- (c) In the case of an email or fax, on the first such working day after the day of transmission by the fax operator provided that the transmitting fax machine operates upon completion of the transmission a transmission report stating that the notice has been duly transmitted without error to the addressee's email or fax number.

21.3 The rights of either party arising out of any provision of the Agreement or any breach thereof shall not be waived except in writing. Any waiver by either party of any of its rights under the Agreement or of any breach of the Agreement shall not be

construed as a waiver of any other rights or of any other or further breach.

21.4 The Agreement constitutes the entire agreement of the parties on the subject matter hereof and supersedes all previous agreements and representations written or oral with respect to the subject matter hereof. Each Proposal and the accompanying terms and conditions when agreed between the parties constitutes a separate contract.

21.5 Nothing in this clause shall limit or exclude any liability for fraud.

21.6 All provisions of the Agreement are severable and in the event of any of them (or any part of them) being held to be invalid by any competent court the Agreement shall be interpreted as if such invalid provisions (or part) were not contained herein.

21.7 This Clause and Clauses 1,6,**Error! Reference source not found.**,10,13,14, and 19 shall survive termination of this Agreement.

21.8 A person who is not party to this Agreement has no right under the (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

21.9 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.