

# **RedRay Consulting Limited**

## **Terms of Business**

### **1. The Agreement, the Parties and the Services**

This Agreement is a contract for supply of services between the following Parties:

- i) The Client, to whom the proposal ("the Proposal") is addressed and who may have provided the brief or terms of reference incorporated in the Proposal, and
- ii) RedRay Consulting Limited ("the Company"), who submitted the Proposal and whose registered office is at 5-6 Georges Street, St Albans, Hertfordshire, AL3 4ER, England

This Agreement includes these Terms of Agreement and the Proposal.

### **2. Commencement and Duration**

2.1 Notwithstanding the date of this Agreement the effective date of the appointment of the Company shall be the date upon which this Agreement was executed by the Parties or the date when the Company shall have first commenced performance of the services specified in the Proposal ("the Services"), whichever is the earlier. The appointment of the Company shall continue until such time as the Services have been completed and the Company's final invoice has been submitted to the Client or the Agreement has been terminated in accordance with the provisions of these conditions.

### **3. Third Parties**

Nothing in this contract confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999, save as set out in clause 14.2.

### **4. The Company's Obligations**

4.1 The Company shall exercise reasonable skill and care in the provision of the Services hereunder and shall only be liable if and to the extent that it has been negligent in such provision. The Company shall use reasonable endeavours to perform the Services in accordance with any programme agreed with the Client from time to time. The Company shall have no liability for any failure or delay in the provision of the Services or any part thereof resulting from any condition or circumstances beyond the reasonable control of the Company and the Client shall pay the Company in accordance with clause 10 during the persistence of such condition or circumstance.

4.2 The Company undertakes to effect and maintain professional indemnity insurance for the period of one year from the date of completion of the Services in an amount not less than the lesser of the two amounts calculated in accordance with Clause 14.1 (a) and (b) hereof in respect of the Services, provided that the such insurance is available to the Company at commercially reasonable rates and subject to all exceptions, exclusions and limitations to the scope of cover that are commonly included in such insurance at the time the insurance is taken out or renewed, as the case may be. If such insurance cover is not available, the Company shall promptly notify the Client.

### **5. Client's Instructions**

5.1 The Company will accept instructions concerning the Services to be provided from any person or body so authorised in writing by the Client.

### **6. Client's Obligations**

6.1 The Client shall use reasonable endeavours to supply to the Company, promptly and free of charge: a) any instructions, decisions, consents and approvals; and b) any relevant data and information in the possession of the Client or any of his agents, consultants or contractors which the Company may require in order to carry out the Services

6.2 The Client shall arrange such rights of access to the property and use of the Client's facilities as described in (or reasonably inferred from) this Agreement.

### **7. Site Operations**

7.1 The Services may include visits to site(s) by the Company, who shall then be the Client's visitor. The Company shall not be deemed to have assumed the role of occupier or otherwise to have

assumed control or responsibility for the site or the personnel on it. The Client shall notify any other consultants and contractors on the site (other than the Company's sub-consultants): (a) of the presence of the Company's personnel; and (b) of the extent (if any) to which the Company is authorised to direct and/or supervise their work; and (c) that the presence (or otherwise) of the Company's personnel does not relieve them of their responsibilities including safety and their obligations under their respective contracts and agreements.

7.2 The Company shall take reasonable precautions and use reasonable endeavours to minimise damage to property if, notwithstanding such precautions and endeavours, any such property is damaged, the cost of rectification and all other losses shall be borne by the Client.

## **8. Confidentiality**

8.1 Each Party shall maintain the confidentiality of any documents and other information received from the other Party which are confidential. The recipient shall not release or disclose such documents or information, or permit release or disclosure, without the express instruction or prior permission of the other Party or as obliged to do so by law or by the rules of a recognised security exchange.

8.2 Reports are prepared by the Company for the Client on a confidential basis and are not to be relied on by third parties. Furthermore they may contain replies to enquiries which are provided in strict confidence and not to be disclosed to any third party without the written consent of the Company. The Client acknowledges that reports may contain confidential information, which may cause harm to third parties if disclosed, and the Client hereby agrees to indemnify and hold harmless the Company in respect of claims, losses, expenses or costs arising from unauthorised disclosure by the Client.

## **9. Copyright and Ownership of Documents**

9.1 All rights to any intellectual property acquired or developed in connection with this Agreement (whether or not registered or capable of registration) ("Rights") including but not limited to designs, trade marks, patents and copyright in all drawings, reports, calculations, computer data and other documents ("the Documents") provided by the Company in connection with the Agreement shall, as the case may be, vest or remain vested in the Company. The Client shall have a licence to use the Rights for the purposes described in (or reasonably inferred from) this Agreement. The Company shall not be liable for the use by any person of any of the Rights for any purpose other than that for which they were prepared. In the event of the Client being in default of payment of any fees or other amounts due under this Agreement, the Company may revoke the licence granted herein.

9.2 The Company may with the consent of the Client, which consent shall not be unreasonably withheld or delayed, publish alone or in conjunction with any other person articles, photographs or other illustrations relating to the appointment of the Company.

9.3 The Client undertakes to advise any other party or individual to whom it passes any Document that they may not rely upon any such Document.

## **10. Remuneration**

10.1 The Client shall pay the Company for the Services at the agreed daily rate.

10.2 Where expenses are incurred in performing the Services the Client shall reimburse the Company at cost.

10.3 Amounts quoted in this Agreement exclude any Value Added Tax ("VAT") payable under the law.

## **12. Payment Procedure**

12.1 The Client shall pay the Company each amount invoiced including VAT where applicable subject to correction of any error within 14 days of the date of the invoice.

12.2 If any item or part of an item on an invoice is disputed or subject to question by the Client the Client shall inform the Company immediately in writing and the payment by the Client of the remainder of that invoice shall not be withheld.

12.3 The Client shall pay interest on any late payment at the interest rate specified within the Late Payment of Commercial Debts Act.

## **13. Suspension and Termination**

13.1 Either Party may give 28 days' written Notice of termination to the other Party.

13.2 In the event of a breach of this Agreement by the Client the Company may give 14 days' Notice of its intention to terminate its appointment setting out the acts or omissions of the Client relied upon

as evidence of such breach. If the Client does not, to the reasonable satisfaction of the Company, take expeditious steps to repair the breach during the notice period the Company may forthwith on the expiry of the notice period terminate its appointment by further Notice. Notwithstanding the foregoing, in the event of the failure of the Client to make any payment due to the Company by the final date for payment the Company may, upon not less than 14 days' Notice, terminate its appointment.

13.3 In the event of a breach of this Agreement by the Company the Client may give 14 days' Notice of its intention to terminate the appointment of the Company setting out the acts or omissions of the Company relied upon as evidence of such breach. If the Company does not, to the reasonable satisfaction of the Client, take expeditious steps to repair the breach during the notice period the Client may forthwith on the expiry of the notice period terminate the appointment of the Company by further Notice.

13.4 Provided always that the Client has made all payments properly due in accordance with Clause 10 the Client may by 14 days Notice require the Company to suspend the carrying out of the Services for a period of up to 6 months. If the Client has not required the Company to resume the performance of the Services within a period of 6 months from the date of the Client's Notice of suspension the Agreement shall be considered to have been abandoned and the Agreement shall terminate.

13.5 Termination of the Company's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either Party to this Agreement.

#### **14. Liability and Warranties**

14.1 Notwithstanding anything to the contrary contained elsewhere herein the total liability in aggregate of the Company under or in connection with this Agreement, whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be limited to the lesser of: a) ten times the total fee (exclusive of Disbursements and VAT) due to the Company under this Agreement; or b) five hundred thousand pounds (exclusive of Disbursements and VAT).

14.2 Save in respect of death or personal injury the Client shall look only to the Company for redress if the Client considers there has been a breach of this Agreement. The Client agrees not to pursue any claims in contract, tort or for breach of statutory duty (including negligence) against any individuals working or who worked for the Company at any time. The Client acknowledges that such individuals are entitled to enforce this term of the conditions pursuant to the Contracts (Rights of Third Parties) Act 1999.

#### **15. Expiry of Liability**

No action or proceedings under or in connection with this Agreement whether in contract or in tort, in negligence or for breach of statutory duty or otherwise shall be commenced against the Company after the expiry of 6 years from the date of completion of the Services or such earlier date as may be prescribed by law.

#### **16. Disputes**

16.1 This Agreement shall be governed and construed in all respects in accordance with the laws of England and each Party hereby submits to the exclusive jurisdiction of the English Courts.

#### **17. Notices**

Any notices (Notices) served by either the Company or the Client shall be in writing delivered by registered post to the Registered Office of the Party concerned and shall be deemed to have been received forty eight hours following the time of posting.

#### **18. Assignment**

Neither Party shall assign sub-let or otherwise transfer any obligation or benefit under this Agreement without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed. Assignment shall be by absolute legal assignment only and only to a party taking over the entire role of the Company or Client as the case may be in relation to the project