

CONSULTANCY TERMS & CONDITIONS

These Consultancy Terms & Conditions ("Conditions ") are the terms of business governing the provision of Consultancy services by **Synergy Computer Services Limited t/a 2fourseven** ("the Consultant") and you ("the Customer") for the supply of Services described in the Project Specification.

1. DEFINITIONS

1.1. In these Conditions unless the context otherwise requires the following words and expressions shall have the meanings assigned to them:

"Charges"	means all monies to be paid to the Consultant by the Customer;
"Conditions"	means the Conditions (including any schedule or annexure to them);
"CSR"	means the Customer Service Record in the form appended to the Project Specification to be completed by the Customer;
"Deliverables"	means any Document or other materials, and any data or other information provided by the Consultant relating to the Services;
"Document"	means anything in which information of any description is recorded, and "copy", in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;
"Input Material"	means any Document or other materials, and any data or other information provided to the Consultant by the Customer relating to the Services;
"Project Specification "	means the Project Specification in which the Services and the Consultant's Charges are set out and all future Project Specifications agreed by the parties during the continuance of the Master Consultancy Agreement;
"Services"	means the services to be provided by the Consultant for the Customer as set out in an agreed Project Specification;

1.2. In these Conditions, unless the context otherwise requires:

- 1.2.1. words in the singular include the plural and vice versa and words in one gender include any other gender;
- 1.2.2. a reference to any statutory provision shall be construed as a reference to that statute or provision as from time to time amended;
- 1.2.3. the table of contents and headings are for convenience only and shall not affect the interpretation of these Conditions.

2. SUPPLY OF THE SERVICES

2.1. It is agreed that the Consultant shall provide the Services as set out in the Project Specification to the Customer subject to these Conditions. Details of each project agreed between the Parties shall be set out in a Project Specification and signed by both Parties.

2.2. On the Consultant's request the Customer shall at its own expense supply the Consultant with all necessary Documents, materials, data or other information relating to the Services, within sufficient

time to enable the Consultant to provide the Services in accordance with the Project Specification. The Customer shall ensure the accuracy of all Input Material.

- 2.3. The Customer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Consultant shall have no liability for any loss or damage of the Input Material, however caused. All Deliverables shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.
- 2.4. The Consultant may at any time, without notifying the Customer, make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.
- 2.5. The Customer shall agree the CSR at the request of the Consultant and will sign the CSR at the Consultant's demand to acknowledge acceptance of the Service in any event, save that if the Customer fails to accept the Service it shall give written notice to the Consultant within five (5) working days of the Consultant's first demand.

3. **CHARGES**

- 3.1. The Customer shall pay the Consultant's Charges set out in the Project Specification and such further reasonable charges agreed between the Consultant and the Customer for the provision of the Services or which, in the Consultant's sole discretion, are required as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Customer.
- 3.2. All charges for the provision of the Services are exclusive of any Value Added Tax, for which the Customer shall be additionally liable at the applicable rate from time to time.
- 3.3. The Consultant shall invoice the Customer for the Services in accordance with the provisions set out in the Project Specification or at other times agreed with the Customer as set out in the Project Specification.
- 3.4. The Charges and any agreed expenses plus any additional administrative charges and all other sums due shall be paid by the Customer (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of the Consultant's invoice ("the Due Date").
- 3.5. If payment is not received by the Due Date, the Consultant shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgment) at the rate of 4% above the base rate from time to time of Lloyds TSB Bank plc from the due date until the outstanding amount is paid in full and/or the Consultant reserves its right to suspend the Services.
- 3.6. If payment is not received by the Due Date, the Consultant shall be entitled, without limiting any other rights it may have, to charge the Customer for any reasonable legal costs it may incur for recovery of costs owed to the Consultant by the Customer.

4. **EXPENSES**

- 4.1. The Customer will reimburse all expenses properly incurred by the Consultant in rendering the Services as set out in the Project Specification from time to time.

5. **INTELLECTUAL PROPERTY**

- 5.1. The copyright in any reports, documents, information and applications prepared or developed for the Customer in the course of carrying out the Services shall belong to the Consultant but shall

become the property of the Customer once the final payment for the Services as agreed in the relevant Project Specification have been paid for in full.

- 5.2. The copyright in any programs, software or any computer applications prepared or developed by the Consultant for the Customer in the course of carrying out the Services shall belong to the Consultant. Upon payment of the charge set out in the Assignment Specification, the Customer shall have a non-transferable licence to use such programs for its internal data processing subject to and in accordance with its licence agreement.
- 5.3. Notwithstanding the assignment of copyright in any of the items referred to in clause 4.1 above, the Consultant will retain ownership of all know-how developed for or in the course of providing the Services, without restriction.

6. **WARRANTIES**

- 6.1. The Consultant warrants to the Customer that it will exercise all reasonable care and skill in carrying out the Services, in accordance with the Project Specification and at the intervals and at the times referred to in the Project Specification (if any).

7. **2fourseven's LIABILITY**

- 7.1. The Consultant can help Customers to select Products, but the assessment and selection of the Products remain the Customer's sole responsibility. The Consultant undertakes only that in giving such assistance (if any) it has acted in good faith and has not been wilfully misleading.
- 7.2. In no event shall the Consultant's liability to the Customer for direct damage to the Customer's property arising from the supply of Products or Services exceed £1,000,000.
- 7.3. The Consultant shall not be liable to the Customer for indirect loss including but not limited to loss of profits, data, goodwill or including loss or damage suffered by the Customer as a result of an action brought by a third party, even if such loss was reasonably foreseeable or the Consultant had been advised of the possibility of the Customer incurring the same.
- 7.4. The Consultant's liability to the Customer for any direct loss or damage of whatsoever nature and howsoever cause shall be limited to and in all circumstances other than the direct damage to the Customer's property shall not exceed the Price.
- 7.5. The Consultant shall not be liable for imperfect work caused by any inaccuracies in any drawings, bills of quantities or specifications supplied by the Customer.
- 7.6. The Customer indemnifies and shall hold the Consultant harmless against all and any loss, damage, claim or liability otherwise arising due to the death, personal injury or damage to the property of employees, agents or the Consultant's sub-contractors whilst on the Customer's premises for the purposes of provision of the Services and which arise due to the negligence, acts or omissions of the Customer, its agents or employees.

8. **TERM AND TERMINATION**

- 8.1. The Master Consultancy Agreement and/or the Project Specification Conditions shall continue in force until terminated in accordance with sub-clause 8.2 below.
- 8.2. Either party may terminate these Conditions immediately upon written notice to the other Party in the event of:
 - 8.2.1. any material breach of these Conditions and/or the then current Project Specification by the other party provided any such breach is not remedied (if remediable) within 30 days after the service of written notice requiring the same;

8.2.2. the other Party becoming bankrupt or entering into liquidation whether voluntary or compulsory (other than for the purpose of solvent amalgamation or reconstruction) passing a resolution for its winding up, having a receiver, manager, administrative receiver, administrator, trustee or similar officer appointed over the whole or any part of its business or assets, or making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt, or ceasing or threatening to cease to trade.

8.3. Either party shall be entitled to terminate the Services by giving the other party no less than three months' prior written notice to the other party upon termination of the Services. If the Services are terminated and the Consultant has not completed the Services, nevertheless, the Customer will be liable for the full costs as if the Services had been completed. In the event of termination by the Customer the Consultant shall be under no obligation to provide the Services to the Customer until full payment for the Services has been received by the Consultant.

9. **IMPLEMENTATION AND ACCESS**

9.1. The Customer shall prepare the Implementation Site in accordance with the Consultant's requirements to enable the Consultant to deliver the Services and shall, upon notice from the Consultant, correct any deficiencies in such preparation. All costs of preparing and correcting deficiencies in the Customer's premises will be the responsibility of the Customer. If requested by the Customer, the Consultant shall prepare or inspect the Customer's premises on a time and materials basis, plus expenses, or on such other terms as may be agreed in writing by the parties.

9.2. The Customer shall procure that all passwords and usernames or any other security measure affecting access to or into the Customers or affected systems to which the Consultant require access are disclosed to the Consultant to permit the Consultant to perform the Services without delay.

9.3. If during or before Delivery or in the course of the Services the Consultant encounters at the Implementation Site any conditions which would result in delay or an increase in the cost of performing the Services then the Consultant shall give the Customer notice of the conditions and of the Consultant's anticipated additional costs under this sub-condition as soon as practicable after becoming aware of the unforeseen conditions.

9.4. the Consultant may invoice the Customer for the additional cost incurred by the Consultant in performing the Services in consequence of any of the conditions set out in clauses 4 and 5 of this agreement or as otherwise notified to the Customer in writing.

10. **SITE ACCESS**

10.1. The Customer shall give the Consultant (including its employees and sub-contractors, and their vehicles and equipment) access to the Customer's premises at all times to assist Delivery and allow the Consultant to perform the Services.

10.2. The Consultant shall permit the Customer its premises to enter its premises at all reasonable hours. the Consultant shall also permit other contractors or suppliers engaged by the Customer to enter the Customer's premises and execute work or deliver goods at all reasonable hours, but unless the Agreement expressly provides otherwise, the Consultant shall not be required to allow them to have such access or facilities as would unreasonably impede its performance of the Approved Programme and/or Delivery. the Consultant shall otherwise take full account of and abide by the Customer's site and security rules for contractors.

11. **CONFIDENTIALITY**

- 11.1. The Parties acknowledge that during the provision of the Services either may become aware of information relating to the other, its or their Customers or businesses, business plans or affairs, which information is proprietary and confidential to that party, or Customers (as the case may be). Confidential Information includes, without limitation, programs, documentation, all methods or concepts, trade secrets, information relating to Customers' lists of requirements, price lists or pricing structures, marketing and sales information, business plans or dealings, employees or officers, financial information and plans, designs, product lines, research activities, any document marked "Confidential" or any information which the other party has been informed is confidential or which that party ought reasonably comprehend would be regarded as confidential, or any information given to either party in confidence by Customers, suppliers or others.
- 11.2. The Parties undertake to maintain the confidentiality of the Confidential Information at all times and keep it secure and protected against theft, damage, loss or unauthorised access and not, during the currency of these Conditions or at any time afterwards, deal in any way directly or indirectly with the Confidential Information without the prior written consent of the other party.
- 11.3. The terms and obligations imposed by this Clause 9 shall survive the termination or expiry of these Conditions for any reason but shall not apply to any Confidential Information to the extent to which it is:
- 11.3.1. at the time of receipt by the receiving party is in the public domain, or subsequently comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors;
 - 11.3.2. lawfully received by the receiving party from a third party on an unrestricted basis;
 - 11.3.3. already known to the receiving party before receipt pursuant to these Conditions, or
 - 11.3.4. required by law, regulation or order of a competent authority to be disclosed by either party.
- 11.4. The existence and terms of these Conditions are confidential and, save as required by law, regulation or order of a competent authority, may not be disclosed by the Customer to any third party without the Consultant's prior written consent.

12. **FORCE MAJEURE**

- 12.1. Neither party shall be liable in any way for loss, damage or delay consequent upon any circumstances beyond its reasonable control.

13. **EMPLOYEE BENEFITS**

- 13.1. Neither the Consultant nor his/its employees (if any) shall be entitled to any benefit, statutory or otherwise, afforded an employee of the Customer. The Customer shall not be held liable or accountable for any such rights or obligations that may accrue to the Consultant's employees.

14. **GENERAL**

- 14.1. These Conditions together with the Master Consultancy Agreement and the Project Specification, supersede any previous agreement or understanding and may not be varied except in writing by the parties. All other terms and Conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 14.2. In the event of conflict between the Project Specification and these Conditions the provisions of the Project Specification shall prevail.

- 14.3. Any notice to a party under these Conditions shall be in writing signed by or on behalf of the party giving it, and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery or facsimile to the address of the party as set out on page 1 of these Conditions or as otherwise notified in writing from time to time.
- 14.4. Nothing in these Conditions or the Project Specification shall constitute a partnership or joint venture between the parties.
- 14.5. The Customer shall not assign, sublicense, extend or transfer its rights under these Conditions by operation of law or otherwise.
- 14.6. The Consultant shall be entitled to both:
 - 14.6.1. sub-contract any part of the Services to a third party and
 - 14.6.2. assign, sub-contract or otherwise transfer its rights or obligations under these conditions, in whole or in part to any company.
- 12.7. The Customer shall not during the life of the Agreement, and for a further period of six (6) months after the termination of this Agreement, hire any person employed by the Consultant who has been actively involved in the performance of these Conditions without the express prior written consent of the Consultant. In addition to all other rights and remedies, the Customer shall pay the Consultant as liquidated damages a sum equivalent to 20% of the gross annual salary and all benefits and emoluments of the employee, representing the recruitment and training costs to the Consultant of replacing the employee and anticipated loss of profit or other loss attributable to the departure of the employee.
- 14.7. Provisions of these Conditions which are either expressed to survive its termination or from their nature or context it is contemplated that they are to survive such termination, shall remain in full force and effect notwithstanding such termination.
- 14.8. The Parties agree that all rights (express or implied) afforded to any third party by the Contracts (Rights of Third Parties) Act 1999 are expressly excluded.
- 14.9. No failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.10. If any competent authority to be invalid or unenforceable in whole or in part holds the provision of these Conditions, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 14.11. English law shall be the applicable law of these Conditions and the parties agree to submit to the exclusive jurisdiction of the English Courts.