

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8.

1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in Glasgow are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5.

Client: the person or firm who purchases Services from the Company.

Commencement Date: has the meaning set out in clause 2.2.

Company: Racon Management Services Limited incorporated and registered in Scotland with company number SC369751 whose registered office is at Suite 3 Mercantile Chambers, 53 Bothwell Street, Glasgow, G2 6TS.

Company Materials: has the meaning set out in clause 4.1(f).

Company Personnel: any person who is, or has been engaged as an employee, consultant or subcontractor of the Company for the supply of the Services.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.5.

Confidential Information: information (in any form or medium) relating to the business, products, affairs and finances of either party being confidential to the parties and which is not publically available, which includes, without limitation, trade secrets, technical data and know-how relating to the business of either party.

Contract: the contract between the Company and the Client for the supply of Services made up of these Conditions, the Proposal and the Order.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Client Default: has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the Proposal produced by the Company for the Client.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, 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.

Order: the Client's order for the Services after acceptance of a Proposal.

Proposal: the proposal produced by the Company detailing the Services.

Services: the services, including the Deliverables, supplied by the Company to the Client as described or specified in the Proposal.

1.2 Interpretation:

(a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(c) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Proposal shall be produced by the Company and shall be deemed to be accepted when the Client issues a written acceptance of the Proposal at which point an Order shall be produced, or in the absence of an Order, the written acceptance shall be deemed to be the Order.

2.2 The Order constitutes confirmation by the Client to purchase Services in accordance with the Proposal and these Conditions at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

3.1 The Company shall supply the Services to the Client in accordance with the Proposal in all material respects.

3.2 The Company shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Client in any such event.

3.4 The Company warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 The Company shall appoint appropriate Company Personnel to perform the Services and where applicable such Company Personnel may be identified in the Proposal. The Company will appoint a manager in respect of the Services, such person shall also be identified in the Proposal. Only such named manager shall have the authority to contractually bind the Company on any matters relating to the Services.

4. Client's obligations

4.1 The Client shall:

- (a) co-operate with the Company in all matters relating to the Services;
- (b) where the Services are to be carried out at the Client's premises, provide the Company, and the appropriate Company Personnel, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Company;
- (c) provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- (e) use its best endeavours to inform the Company and the appropriate Company Personnel of the health and safety and security requirements that apply at the Client's premises or at any location where the Services are to be carried out;
- (f) keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Client's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
- (g) comply with any additional obligations as set out in the Proposal.

4.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default,

and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Company's performance of any of its obligations;

- (b) the Company shall reserve the right to increase Charges in the event of a Client Default;
- (c) the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (d) the Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default.

5. Charges and payment

5.1 Where the Charges for the Services are calculated on a time and materials basis:

- (a) the Charges shall be calculated in accordance with the Company's daily fee rates, as set out in the Proposal;
- (b) the Company's standard daily fee rates for each individual are calculated on the basis of an eight-hour day from [8.00 am to 5.00 pm].

5.2 Where the Charges are calculated on a fixed price basis the amount of such Charges will be set out in the Proposal.

5.3 Unless otherwise stated in the Proposal, the Company shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Company appoints in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.

5.4 The Company shall invoice the Client at intervals specified in the Proposal.

5.5 The Client shall pay each invoice submitted by the Company:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Company; and
- (c) time for payment shall be of the essence of the Contract.

5.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Client, the Client shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 5.7** If the Client fails to make any payment due to the Company under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% (per cent) per annum above the Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount on demand.
- 5.8** The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Company to the Client.
- 6. Variation Order**
- 6.1** Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until both parties have agreed in writing the proposed changes, such document to be referred to as a "Variation Order". The Variation Order shall set out the proposed changes and the effect that those changes will have on the Services, Charges and the timetable for the Services.
- 6.2** If the Company wishes to make a change to the Services it shall provide a draft Variation Order to the Client.
- 6.3** If the Client wishes to make a change to the Services:
- (a) it shall notify the Company and provide as much detail as the Company reasonably requires of the proposed changes, including the timing of the proposed change; and
- (b) the Company shall, as soon as reasonably practicable after receiving the information at Clause 6.3(a), provide a draft Variation Order to the Client.
- 6.4** If both parties agree to the Variation Order in writing that Variation Order shall amend the Proposal.
- 7. Intellectual property rights**
- 7.1** All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.
- 7.2** The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Client.
- 7.3** All Company Materials are the exclusive property of the Company.
- 8. Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 8.1** Nothing in the Contract shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2** Subject to clause 8.1, the Company shall not be liable to the Client, whether in contract, delict or tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.
- 8.3** Subject to clause 8.1, the Company's total liability to the Client, whether in contract, delict or tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 20% of the total Charges paid under the Contract.
- 8.4** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5** This clause 8 shall survive termination of the Contract.
- 9. Termination**
- 9.1** Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 months' written notice.
- 9.2** Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;

- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 5 days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Client; or
- (c) the parties are unable to agree the terms of any Variation Order.

9.4 Without limiting its other rights or remedies, the Company may suspend provision of the Services under the Contract or any other contract between the Client and the Company if the Client becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d) or the Company reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

10. Consequences of termination

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of the Company Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Company may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be

- unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

11. Non-Solicitation

11.1 The Client shall not, without the prior written consent of the Company, at any time from the date on which any the Contract commences to 12 months after termination of the Contract, solicit or entice away from the Company or employ or attempt to employ any Company Personnel.

11.2 In the event of default of clause 11.1 the Client shall pay to the Company, on demand, 30% of the gross annual salary or wages or fees of the Company Personnel as liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of the Company's loss.

12. General

12.1 Force majeure

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.

For the purposes of this clause 12.1 a "**Force Majeure Event**" means any circumstance not within a party's reasonable control including, without limitation: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, civil commotion or riots or war; (iv) collapse of buildings, fire, explosion or accident; (v) any labour or trade dispute, strikes, industrial action or lockouts; (vi) non-performance by suppliers or subcontractors; and (vii) interruption or failure of a utility service.

12.2 Assignment and other dealings

- (a) The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.3 Confidentiality

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3(b).
- (b) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information comply with this clause 12.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

12.4 Entire agreement

- (a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.5 Variation

Subject to clause 6, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.6 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

12.7 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.8 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or by email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.8(a); if sent by pre-paid first class post at 9.00 am on the second Business Day after posting; or, if sent by email, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.9 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with Scots law.

12.10 Jurisdiction

Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.