

**COLLEAGUE SOFTWARE LIMITED****Standard Consultancy Agreement**

This Agreement applies to the provision of consultancy services by **Colleague Software Limited** of 63b Thorpe Road, Norwich, NR1 1UD (registered in England and Wales under number 4320953) whose registered office is at Holland Court, The Close, Norwich, NR1 4DY ("**Colleague**") to the customer specified on the Consultancy Order Form ("**Customer**").

The Agreement is made on the date set out beneath the signature on the Consultancy Order Form on behalf of the Customer ("**Effective Date**") subject to the terms and conditions below and the details listed in the Consultancy Order Form.

**1 Definitions and Interpretation**

In this Agreement, unless the context otherwise requires, the following words and phrases shall have the following meanings:

**"Confidential Information"** means any information regarding the provision of Consultancy Services, the Consultancy Order Form, this Agreement and any other information which is designated either in writing or orally as "confidential", is disclosed in circumstances which are confidential or is by its nature confidential, and which is obtained under or in connection with this Agreement;

**"Colleague Personnel"** means the personnel provided by Colleague to provide the Consultancy Services pursuant to clause 7.1;

**"Consultancy Fee"** means the fee for the Consultancy Services as detailed in clause 4.1 or the Consultancy Order Form;

**"Consultancy Order Form"** means the form signed on behalf of the Customer by which it orders the Consultancy Services from Colleague;

**"Consultancy Services"** means the consultancy services detailed in the Consultancy Order Form and may include without limitation training, data conversion, software development and configuration services;

**"Intellectual Property"** means any invention or discovery, improvement, design, process, information, know-how, copyright work (including without limitation rights in and to technical processes, systems, methods, software design, algorithms, code, scripts or other computer software), rights in databases, domain name, trade mark, trade name or get-up (whether registered or not and including applications for the same), all records, reports, documents, papers and other materials whatsoever and all other similar proprietary rights anywhere in the world;

**"Intellectual Property Rights"** means all Intellectual Property in and relating to all specifications, training materials and guides, computer code, software design, user interfaces and all other documents, results and materials developed or produced by Colleague or Colleague Personnel and/ or the Customer, its employees, directors, agents or sub-contractors pursuant to the Consultancy Order Form;

**"Licence"** means the software licence in place between Colleague and the Customer;

**"Software"** has the meaning ascribed to it in clause 1.1 of the Licence.

**2 Acceptance**

2.1 The Customer agrees and confirms that the terms and conditions of this Agreement are deemed to be accepted by the Customer upon signature of the Consultancy Order Form.

2.2 The Customer shall ensure that only those persons authorised to do so shall sign the Consultancy Order Form.

**3 Consultancy Services**

3.1 Colleague shall provide the Consultancy Services upon the terms and conditions set out in this Agreement.

3.2 The Customer acknowledges and agrees that any timetable specified in the Consultancy Order Form are estimates only and shall not be binding on Colleague unless stated otherwise in the Consultancy Order Form.

**4 Consultancy Fee and other charges**

4.1 Unless otherwise stated in the Consultancy Order Form, Colleague shall charge the Customer for the Consultancy Services on a time and materials basis at Colleague's standard consultancy rates from time to time.

- 4.2 Unless otherwise stated in the Consultancy Order Form, Colleague shall invoice the Customer for the Consultancy Fee when the Consultancy Services are complete. The Customer shall pay to Colleague the Consultancy Fee within 14 days of the date of such invoice.
- 4.3 The Customer shall pay for any other costs and expenses incurred by Colleague in connection with its performance of the Consultancy Services within 14 days of the date of Colleague's invoice for those additional costs and expenses. Such costs and expenses shall be limited to any contemplated in the Consultancy Order Form and to other reasonable travel and living expenses that Colleague incurs in the performance of the Consultancy Services. If so requested by the Customer, Colleague shall provide copies of supporting documentation for such charges.
- 4.4 The Consultancy Fee and any additional costs and expenses payable by the Customer under this Agreement are exclusive of Value Added Tax. The Customer shall pay to Colleague applicable Value Added Tax in addition to the Consultancy Fee and any other costs and expenses under this Agreement and any such Value Added Tax will be included on the relevant invoice.
- 4.5 If the Customer fails to pay any amount payable under this Agreement within thirty days after the due date, Colleague may (in addition to any other of Colleague's rights or remedies):
- (a) charge the Customer interest of any overdue amount payable by the Customer from the due date for payment until the date of actual payment (both dates inclusive) at the rate of three percent above the base lending rate for the time being of Lloyds TSB Bank plc from time to time. Colleague reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
  - (b) suspend the provision of Consultancy Services until the date of actual payment of the overdue amount payable; or
  - (c) by notice to the Customer, immediately terminate this Agreement.
- 4.6 All amounts payable under this Agreement shall be paid in full without any deductions or withholding other than as required by law and neither party shall be entitled to assert any right of credit, set-off or counter-claim against the other party in

order to withhold payment of any amount in any way.

## **5 Colleague's obligations**

- 5.1 Colleague shall:
- (a) ensure Colleague Personnel provide the Consultancy Services using reasonable skill and care;
  - (b) provide the Consultancy Services in a timely and professional manner; and
  - (c) be responsible for making all PAYE deductions for tax and national insurance contributions from the remuneration it pays Colleague Personnel.

## **6 Customer's obligations**

- 6.1 The Customer shall promptly provide Colleague with access to such of the Customer's materials, information, documents, facilities, employees, consultants or subcontractors, including without limitation, making available such office, technical and secretarial equipment and services, as Colleague reasonably requires or requests to perform the Consultancy Services and all other resources specified in the Consultancy Order Form. The Customer acknowledges that Colleague's ability to perform the Consultancy Services as contemplated in the Consultancy Order Form will depend upon the proper fulfilment by the Customer and any third party vendor or subcontractor of the Customer of the Customer's obligations contained in this Agreement and Colleague shall not be liable in respect of any delay or other default which is attributable to the Customer or its third party vendors or subcontractors.
- 6.2 The Customer shall ensure that its employees, consultants and subcontractors co-operate fully with Colleague in relation to the provision of the Consultancy Services.
- 6.3 Unless the Customer has provided Colleague with at least 72 hours' prior written notice, should any member of Colleague Personnel report to the Customer's site to work and is unable to work because of any reason within the control of the Customer, or any third party vendor or subcontractor of the Customer, Colleague may invoice the Customer for such time as Colleague Personnel are unable to provide the Consultancy Services on a time and materials basis at Colleague's standard consultancy rates from time to time. If the Consultancy Order Form specifies that the Consultancy

Services are being provided on a fixed fee basis, any invoices submitted by Colleague under this clause 6.3, shall be in addition to the submission of invoices in respect of any fixed fees specified under the Consultancy Order Form.

## **7 Colleague Personnel**

- 7.1 Colleague shall provide such personnel as it considers reasonably necessary to provide the Consultancy Services. Colleague may in its reasonable discretion remove or replace any member of Colleague Personnel provided that such removal or replacement does not materially adversely affect its provision of the Consultancy Services.
- 7.2 The Customer acknowledges and agrees that unless expressly set out otherwise in the Consultancy Order Form, Colleague Personnel employed in the provision of the Consultancy Services shall not be exclusively employed in the provision of the Consultancy Services.
- 7.3 The normal working hours for Colleague Personnel are seven hours between 9:00am and 5:30pm UK time excluding Saturdays, Sundays and public holidays in the United Kingdom.
- 7.4 Except as set out in the Consultancy Order Form, Colleague shall be solely responsible for determining the times and locations at which it performs the Consultancy Services.

## **8 Change Control**

- 8.1 Save as otherwise expressly agreed, changes to the Consultancy Services shall only be validly effected where made in writing and signed by authorised representatives of the parties.

## **9 Intellectual Property Rights and Licence**

- 9.1 All Intellectual Property Rights shall be and remain the property of Colleague.
- 9.2 To the extent that any Intellectual Property Rights do not, by operation of law, vest automatically in Colleague, the Customer hereby irrevocably transfers, assigns and conveys to Colleague all such Intellectual Property Rights by way of present and (where possible) future assignment with full title guarantee in all and any such world wide right, title and/or interest for the full term thereof and the term of any subsequent renewals, together with any and all accrued rights of action thereto (including the right to sue for and recover damages for past infringements).
- 9.3 The Customer shall at the expense and request of Colleague do all acts and things

and execute all documents, papers, forms and authorisations which may be required by Colleague for absolutely vesting all Intellectual Property Rights referred to in clause 9.2 in Colleague.

- 9.4 Should Colleague as part of the Consultancy Services develop any software for the Customer such software in executable code form only shall, upon receipt by Colleague of the Consultancy Fee and all other costs and expenses payable under this Agreement, be deemed to form part of the Software as defined in the Licence and the Customer shall be entitled to use such software in accordance with the provisions of the Licence.

## **10 Warranties**

- 10.1 Colleague warrants that it will provide the Consultancy Services using reasonable skill and care. Should Colleague fail to provide the Consultancy Services using reasonable skill and care Colleague shall at its own expense re-perform the relevant Consultancy Services and such re-performance shall be the Customer's sole remedy in respect of a breach of the warranty contained in this clause 10.1.
- 10.2 EXCEPT AS EXPRESSLY SET OUT IN CLAUSE 10.1, ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION ALL WARRANTIES AS TO QUALITY, PERFORMANCE OR FITNESS FOR PURPOSE) IN RESPECT OF THE PROVISION OF THE CONSULTANCY SERVICES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

## **11 Limitation of Liability**

- 11.1 Nothing in this Agreement shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of one party or the liability for any fraudulent misrepresentation by a party.
- 11.2 SUBJECT TO THE PROVISIONS OF CLAUSE 11.1, THE LIABILITY OF COLLEAGUE TO THE CUSTOMER FOR DIRECT DAMAGE TO THE PHYSICAL PROPERTY OF THE CUSTOMER RESULTING FROM THE NEGLIGENCE OF COLLEAGUE, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS SHALL BE LIMITED FOR ANY ONE INCIDENT OR SERIES OF INCIDENTS TO THE SUM OF £500,000.
- 11.3 SUBJECT TO THE PROVISIONS OF CLAUSES 11.1, 11.2 AND 11.4 THE LIABILITY OF COLLEAGUE TO THE CUSTOMER FOR DIRECT LOSS IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION

WITH THIS AGREEMENT SHALL BE LIMITED FOR ANY ONE INCIDENT OR SERIES OF INCIDENTS TO THE GREATER OF FIVE THOUSAND POUNDS OR 125% OF THE CONSULTANCY FEE PAID OR PAYABLE UNDER THE CONSULTANCY ORDER FORM TO COLLEAGUE BY THE CUSTOMER.

- 11.4 SUBJECT TO THE PROVISIONS OF CLAUSE 11.1, IN NO CIRCUMSTANCES SHALL COLLEAGUE BE LIABLE TO THE CUSTOMER WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE IN RESPECT OF LOSS OF PROFITS, REVENUE, GOODWILL, BUSINESS OPPORTUNITY, CORRUPTION OR LOSS OF OR COST OF RESTORATION OF DATA OR FOR USE OF ANYTHING PROVIDED TO THE CUSTOMER BY COLLEAGUE PURSUANT TO THIS AGREEMENT OR ANY OTHER INDIRECT, CONSEQUENTIAL, FINANCIAL OR ECONOMIC LOSS OR DAMAGE COSTS OR EXPENSES WHATSOEVER OR HOWSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF THE CONSULTANCY SERVICES.

## **12 Indemnity**

- 12.1 The Customer is responsible for any injury, loss or damage whether direct or indirect suffered by any Colleague Personnel providing the Consultancy Services in exactly the same manner as though the Customer were the employer of such personnel and the Customer shall keep Colleague indemnified against all and any liability in respect of any such loss or damage.

## **13 Term and Termination**

- 13.1 This Agreement commences on the Effective Date and shall continue until terminated in accordance with this clause 13.
- 13.2 This Agreement may be terminated:
- (a) by Colleague under clause 4.5(c);
  - (b) by either party immediately by written notice to the other party where the other party has materially breached this Agreement and has failed to remedy that breach within 30 days of the date of service of a written notice from the other party specifying the breach and requiring that it be remedied; and
  - (c) by either party immediately by written notice to the other party where the other party is unable to pay its debts when they become due, enters into any arrangement with its creditors for the

repayment of its debts, an administrator, receiver, liquidator or manager is appointed in respect of the other party or a winding up resolution is passed or a winding up order is made in respect of the other party.

- 13.3 This Agreement shall automatically terminate upon the termination or expiry of the Licence.

- 13.4 The termination of this Agreement (for whatever reason) shall not affect any accrued rights or liabilities of either party, the coming into force or the continuance of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after that termination.

## **14 Confidentiality**

- 14.1 No Confidential Information disclosed by one party ("**Disclosing Party**") to the other party ("**Recipient Party**") under this Agreement may be disclosed by the Recipient Party to any person except:

- (a) employees, agents or subcontractors of the Recipient Party requiring the Confidential Information for the purposes of this Agreement;
- (b) with the prior written consent of the Disclosing Party which consent may be given or withheld in its absolute discretion;
- (c) if the Recipient Party is required to do so by law; or
- (d) if the Recipient Party is required to do so in connection with legal proceedings relating to this Agreement.

- 14.2 No Confidential Information of the Disclosing Party may be used by the Recipient Party for any purpose other than the performance of the Recipient Party's obligations or the exercise of the Recipient Party's rights under this Agreement.

- 14.3 Any party disclosing information under clause 14.1(a) or 14.1(b) must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 14.1.

- 14.4 Clauses 14.1, 14.2 and 14.3 do not apply to Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach

- of this Agreement or an obligation of confidence owed to the Disclosing Party;
- (b) the Recipient Party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Disclosing Party (unless that knowledge arose from disclosure of information in breach of an obligation of confidence);
  - (c) the Recipient Party acquires from a source other than the Disclosing Party where that source is entitled to disclose it; or
  - (d) is independently developed by any employee, agent, officer, director, auditor, adviser, partner, consultant, licensee, sublicensee, joint venturer or subcontractor of the Recipient Party who had no access to the Confidential Information and where the independent development can be proven by contemporaneous written documentation.
- 14.5 The Recipient Party must return to the Disclosing Party all documents or other materials containing or referring to the Confidential Information which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clause 14.1(a) or 14.1(b) if requested to do so by the Disclosing Party.
- 14.6 The provisions of this clause will survive the expiry or earlier termination (for whatever reason) of this Agreement.
- 15 General**
- 15.1 The failure or delay of Colleague to exercise or enforce any right under this Agreement shall not operate as a waiver of that right or preclude the exercise or enforcement of it at any time or times thereafter.
- 15.2 Neither party shall be liable for any delay in or for failure to perform its obligations under this Agreement, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including, without limitation, fires, strikes, insurrection, riots, embargoes, failure of a telecommunications or internet service provider, or regulations of any civil or military authority.
- 15.3 These terms and conditions together with the Consultancy Order Form constitutes the entire understanding between the parties with respect to the subject matter
- of this Agreement and supersedes and replaces all prior agreements, negotiations and discussions between the parties relating to it. The Customer confirms and acknowledges that it has not been induced to enter into this Agreement by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 15.4 No variation of this Agreement shall be valid unless it is in writing and signed by an authorised representative of each of the parties.
- 15.5 The Customer shall not be entitled to assign this Agreement nor any of its rights or obligations hereunder in whole or in part.
- 15.6 Colleague shall be entitled to assign and subcontract this Agreement or any of the rights or obligations hereunder in whole or in part at any time without notice to the Customer.
- 15.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement, and nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement or operate to give any third party the right to enforce any term of this Agreement.
- 15.8 If any provision of this Agreement shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.
- 15.9 Any notice to be given under this Agreement shall be in writing and shall be delivered by hand, sent by first class post or sent by facsimile (such notice to be confirmed by letter posted within 12 hours) to the address of Colleague set out in this Agreement and the address of the Customer set out in the Consultancy Order Form or sent by email to the email address of the other party (or such other address or email address as may have been notified). Any such notice or other document shall be deemed to have been served: if delivered by hand- at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by facsimile or by email - at 9.00am on the next business day after the facsimile or email was dispatched.
- 15.10 This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non exclusive jurisdiction of the English Courts.