

Martin Yarborough

and Associates

Standard Terms and Conditions

1. Revision History

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4. Glossary

“Agreement” means the agreement based on these terms and conditions between the Company and the Client for the Software and/or performance of the Services.

“Client” means the person, firm or company purchasing the Services from the Company.

“Company” means Martin Yarborough and Associates LLC or another company in its group which is entering into the Agreement.

“Default” means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) and/or any actionable default, act, omission, negligence or misstatement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject of this Agreement and in respect of which such party is liable to the other.

“Intellectual Property Rights” means any and all design rights, utility models, patents, inventions, service marks, logos, business names, trademarks (whether registered or unregistered), internet domain names, copyright, rights in databases, data, source codes, reports, drawings, specifications, know-how, trade secrets, confidential information, software designs and/or other materials, semi-conductor rights, topography rights, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent rights whether or not registered or capable of registration and whether subsisting in the United States or any other part of the world together with all or any related goodwill;

“Services” means the services provided by the Company to the Client including, but not limited to, management consultancy and advisory services.

“Site” means the premises at the address for delivery of the Services set out in the Statement of Work.

“Statement of Work” means the document setting out the Services and the rates for such work.

“Termination Date” means the date specified in the Statement of Work when this Agreement shall end unless terminated earlier.

5. Resources

The Client shall provide to the Company access to such resources during normal business hours and shall procure all licenses as the Company shall require performing its obligations under the Agreement.

5.1. Services

In consideration of payment of the fees set out in the Statement of Work the Company shall provide the Services in accordance with the Statement of Work and these terms and conditions.

5.2. Payment of fees

The Company shall invoice the Client for payment of the fees and the Client shall pay them to the Company as specified and at the time stated in the Statement of Work (the “Due Date”).

5.3. Late payment

Where the payment of any invoice or any part of an invoice is not made in accordance with this Agreement, the Company, without prejudice to its other rights under this Agreement or in law, shall be entitled to: -

- charge interest (both before and after judgement) on the outstanding amount at the rate of 4 per cent per annum above the Company's bank's base rate from the Due Date until the date of payment in full; and/or
- suspend and/or withhold any services to be performed by the Company for the Client under this Agreement or any other arrangement; and/or
- terminate this Agreement.

5.4. Expenses

5.4.1. Fixed Fee

All reasonable expenses are included in the fixed fee pricing. This includes costs for:

- Travel
- Entertainment
- Materials
- Other items needed to develop required deliverables

5.4.2. Time and Materials

In addition to the fees for Services the Client shall reimburse all expenses reasonably and properly incurred by the Company in the performance of the Services at any location including but not limited to travel, subsistence and accommodation expenses. Such expenses will be recharged at cost. The Company shall maintain adequate records of such expenses and, at the Client's reasonable request, shall produce copies for inspection. These expenses may be invoiced monthly in arrears detailing the nature of the expense incurred and the person who incurred the expense. The Company will agree with the Client in advance the nature and scope of these expenses.

5.5. Fees

The fees set out in the Statement of Work shall either be stated as fixed or on a time and materials basis. In any case other than fixed fee arrangements all timetables for work and/or performance dates are estimates only and such work will be performed on a daily rate basis. The Company will be entitled to increase any Fees due under this Agreement, by giving the Client 30 days' written notice.

5.6. Site regulations

The Company and the Client agree that when the Company's staff including its agents and sub-contractors, are present on the Client's premises they shall be fully apprised by the Client of all rules, regulations and policies relating to the health and safety of personnel and security on those premises and they shall comply with such rules, regulations, procedures and policies. The Client is entitled to deny access to the Site to any of the Company's staff who in the Client's reasonable opinion constitute a threat to the Client's security or that of its Site, systems or equipment.

5.7. Personnel

The Company shall use reasonable endeavors to retain personnel allocated to provide the Services but where it has no reasonable alternative but to replace such personnel, the Company shall give the Client reasonable prior written notice and will use reasonable endeavors to replace the personnel with personnel of similar experience and qualification and unless the replacement has occurred for reasons beyond the reasonable control of the Company, the Company shall bear the cost of training such replacement personnel.

5.8. Non-solicitation

Each of the Client and the Company agrees that for the period of the Agreement and until expiry of twelve months after termination of the Agreement it shall not without the prior written agreement of the other party knowingly employ or engage on any basis or offer employment or engagement to any staff of the other party who have been associated with the provision of the Services to the Client.

5.9. Consequences

If either party breaches, the party in default shall be liable to pay the other party liquidated damages of an amount equal to the greater of (i) \$50,000; and (ii) an amount equal to the person's aggregate annual gross remuneration package (calculated as at the date of termination of that staff member's employment with that other party) and the parties agree that this is a reasonable pre-estimate of the likely loss a party will suffer as a result of a breach.

5.10. Reports

During the provision of the Services the Company shall provide periodic status reports setting out the progress of the Services at intervals agreed by the parties. The parties shall hold progress meetings if one of the party's requests this by giving at least one week's prior written notice.

5.11. Scope of the Services

The nature and extent of the Services shall be set out in the Statement of Work but at any time prior to completion of the Services either party may request a change to them by notice in writing to the other party. Each party has the right to reject the change request but shall not do so unreasonably. The Company shall provide the Client with an estimate of the fees for the proposed changed Services, and, in cases of change requests made by the Client, the Company reserves the right to charge the Client for costing the change request at its then daily rates. If the parties agree to implement the change, details of the change and the fees, timetable of work and/or delivery dates shall be set out in a further Statement of Work signed by both parties and shall then be deemed to be incorporated into the Agreement.

5.12. Warranty

The Company shall perform the Services with reasonable care and skill. The Client will promptly notify the Company of any breach of the warranties contained in the Agreement as soon as practicable upon becoming aware of it and use reasonable endeavors to do so within 14 days. The Company will be entitled and obliged to remedy such breach within a reasonable time from receipt of notification (which

shall not be greater than 30 days unless otherwise agreed between the parties). This states the Company's entire liability with regard to any breach of the warranties contained in the Agreement.

5.13. No implied terms

Except as expressly stated in these terms and conditions, all warranties, undertakings, duties, terms and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are excluded to the fullest extent permitted by law.

5.14. Deliverables

Where the Services result in the production of reports, software or other materials ("Deliverables") such Deliverables shall be submitted to the Client in draft form for the Client's review and the Client shall provide the Company with written feedback on those Deliverables. The Company will incorporate agreed changes to the draft Deliverables and then issue them to the Client. If the Client does not provide any written feedback in relation to the Deliverables within fourteen days of issue, those Deliverables shall be deemed to be in final form. The Services shall be deemed to be completed upon the issue of all Deliverables in final form and/or upon the completion of all activity set out in the Statement of Work.

5.15. Client co-operation

The successful and timely performance by the Company of the Services is dependent upon the Client's prompt performance of its obligations under the Agreement. The Client agrees to make available to the Company an authorized representative who will:

- be authorized to make binding decisions for the Client with regard to the Agreement, including any change to the Services.
- review all documents, including the draft Deliverables, provided by the Company for review so that corrections or changes may be made by the Company; and
- provide the Company with all reasonable information and documentation concerning the Client's operations and activities which may be required by the Company for the performance of the Services. The Client will be responsible and liable for all third-party actions or omissions where such third party are under the control of the Client.

5.16. Client's staff

Where participation by, or access by the Company to, the Client's staff is necessary for the performance of the Services, the Client agrees that such staff will have the appropriate skill, qualifications and experience and will be available at the times agreed by the parties.

5.17. Rights in the Deliverables

To the extent that the Deliverables or any document, software, data or other material developed by the Company in the course of performing the Services constitutes an original work or includes or incorporates a pre-existing work or proprietary item of the Company all right, title and interest (including all Intellectual Property Rights) shall be and remain vested in the Company. Subject to payment of all fees due under the Agreement, the Company grants to the Client a non-exclusive license to use the same to the extent necessary to enable the Client to possess and use the Deliverables for its internal business only.

5.18. Intellectual Property

The Client and the Company shall retain all right, title and interest (including all Intellectual Property Rights) in all documents, software, data or other materials which constitute the pre-existing works or proprietary items belonging to them respectively and which are provided for use in connection with the performance of the Services. The Client grants to the Company a non-exclusive royalty free license to use these items belonging to the Client to perform the Services. Upon termination of the Agreement the Company shall return to the Client or destroy, at the Client's option, such documents, software, data or other materials, provided that if the Client does not notify the Company of its election within one (1) month following termination, the Company shall be entitled to dispose of those items in any reasonably appropriate manner.

5.19. Intellectual Property indemnity

Subject to the terms of this Agreement, the Company shall indemnify the Client against any loss, claims, damages or expenses (including reasonable costs) that may be incurred or suffered by the Client in respect of any claim or action that the possession or use of the Deliverables by the Client in the manner envisaged by the Agreement infringes the Intellectual Property Rights of any third party (an "Intellectual Property Infringement") provided that the Client:

- gives notice to the Company of any Intellectual Property Infringement as soon as reasonably practicable on becoming aware of it.
- gives the Company the conduct of the defense to and any settlement negotiations in relation to any claim or action in respect of any Intellectual Property Infringement and does not at any time admit liability or attempt to settle or compromise the claim or action without prior consultation with and written consent of the Company which shall not be unreasonably withheld or delayed; and
- acts in accordance with the reasonable wishes of the Company and gives the Company such assistance as the Company shall reasonably require in respect of the conduct of the defense.

5.20. Liability

Neither party excludes or limits liability to the other party for:

- death or personal injury caused by its negligence or that of its subcontractors or agents.
- fraud; or
- breach of the implied terms as to title.

5.21. Limitation of liability

The entire aggregate liability of the Company under or in connection with the Agreement, whether for tort (including negligence) misrepresentation, breach of contract, breach of common law or otherwise, shall not exceed one hundred percent (100%) of the fees paid to the Company by the Client in any twelve-month period prior to the relevant claim arising.

5.22. Exclusions

In no event shall the Company be liable for:

- indirect, pure economic or consequential loss or damage; or

- expenses or loss of profits; or
- loss of revenue, loss of contracts or loss of opportunity.
- loss of or damage to goodwill; or
- loss of anticipated savings or opportunity; or
- loss of or loss of use of data and/or corruption of data; or
- business interruption; or
- aggravated, punitive, exemplary and/or special damages; or
- loss or damage incurred by the Client as a result of third-party claims; or
- any loss or damage to the extent that it is caused by or results from any use of the Deliverables by the Client in any manner other than that for which they were provided.

5.23. Insurance

The Company shall affect 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 Client's reasonable request, produce reasonable evidence of the insurance policy.

5.24. Data

The client shall be responsible for IT security in accordance with industry best practices including the ISO27000 Series in connection with the performance of its obligations.

5.25. Confidentiality

Unless already known or in the public domain or required by law, the parties undertake at all times to keep confidential and not to use or to disclose to any third party without the other party's prior written consent any confidential information supplied by the other party or obtained as a result of the Agreement (or any discussions prior to execution of the Agreement) including all information (in whatever form) relating to the other party's business, technology and customers and the terms of the Agreement. The parties shall procure that any third party or subcontractor to whom information is disclosed pursuant to the Agreement is made aware of and complies with obligations of confidentiality equivalent to those set out in these terms and conditions. As part of standard operations, the Company will provide a Non-Disclosure Agreement to the Client for review and approval.

5.26. Exceptions

The parties agree that information is not to be regarded as confidential information and that the receiving party will have no obligation with respect to any information which that party can demonstrate:

- was already known to it and at its free disposal prior to its receipt from the disclosing party.
- was subsequently disclosed to it lawfully by a third party who did not obtain it (whether directly or indirectly) either from the disclosing party or under any obligation of confidence.
- was in the public domain at the time of receipt by the receiving party or had subsequently entered into the public domain other than by reason of the breach of the provisions of this Clause or of any obligation of confidence.
- is disclosed by the receiving party in compliance with a legal requirement of a Government agency or otherwise where disclosure is required by the operation of law, on condition that it gives the other party reasonable prior written notice of the proposed disclosure to allow that party to intervene.

5.27. Breach of confidence

Each party shall promptly inform the other if it becomes aware of any breach of confidence by any person and shall give the other party all reasonable assistance in connection with any proceedings which it may institute against such person.

5.28. Termination – Default

Either party may terminate the Agreement forthwith by notice in writing to the other party where the other Party has committed a material Default and where such Default is capable of remedy has failed to remedy such Default within thirty (30) days of receiving notice specifying the Default and requiring its remedy.

5.29. Termination – insolvency

Either party may terminate the Agreement forthwith by notice in writing to the other party if the other party is unable to pay its debts as they fall due or if any action, application or proceeding is made with regard to it for:

- a voluntary arrangement or composition or reconstruction of its debts.
- its winding-up or dissolution.
- the appointment of a liquidator, trustee, receiver, administrative receiver, administrator or similar officer.
- any similar action, application or proceeding in any jurisdiction to which it is subject.

5.30. Duration

Unless terminated earlier the Agreement shall continue until the Services have been fully performed and all fees and expenses have been paid.

5.31. Consequences of termination

Termination of the Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue to either party and all provisions which are to survive this agreement or impliedly do so shall remain in force and in effect.

5.32. Force majeure

Neither party shall be liable for any delay or failure to perform its obligations under the Agreement where such delay or failure is due to circumstances beyond its control ("Force Majeure Event") provided that as soon as reasonably possible after the start of the Force Majeure Event, the affected party notifies the other party of the Force Majeure Event, the date on which it started, its anticipated duration and the anticipated effect of the Force Majeure Event on the affected party's ability to perform its obligations.

5.33. Notices

Any notice to be given under the Agreement must be in writing and delivered to the registered office address or principal place of business of the party to be served and shall be deemed served two days after dispatch by first class post or immediately on delivery if hand delivered.

5.34. Variation and waiver

No failure, delay, relaxation or forbearance on the part of either party in exercising any power or right under the Agreement shall operate as a waiver of such power or right or of any other power or right. Any change to the Agreement shall only be valid if it is in writing and signed by the parties.

5.35. Personal Agreement

The Agreement is personal to the Client and the Client shall not assign the benefit of or any interest in or subcontract any obligation under the Agreement.

5.36. Entire Agreement

Except to the extent of any misrepresentation or breach of warranty which constitutes fraud, these terms and conditions and the Statement of Work together constitute the entire agreement between the parties relating to the subject matter of the Agreement.

5.37. Law and Jurisdiction

The Agreement shall be governed by and construed in accordance with Laws of the United States of America and each party agrees to submit to the exclusive jurisdiction of the US Courts.