



# ***CONDITIONS OF CONTRACT***

***Project XXXXXX***

***FOR THE PROVISION  
OF LUMP SUM  
CONSULTANCY  
SERVICES***

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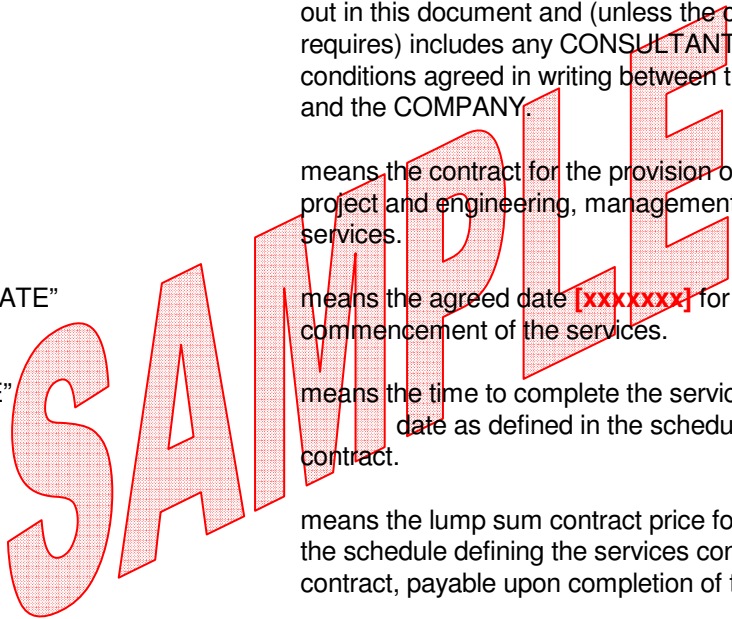
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1.

**INTERPRETATION**

1.1 In these Conditions:

- "CONSULTANT" means Appletree Recruitment Limited (registered in England under number 4247517 as the provider of specialist consultancy services.
- "COMPANY" means [Client XX] (registered in [ England and Wales ] under number [XX] who has engaged CONSULTANT to provide the services.
- "CONSULTANT AFFILIATE" shall mean and include Appletree Recruitment Limited and any company which for the time being is directly or indirectly controlled by Appletree Recruitment Limited.
- "CONDITIONS" means the standard terms and conditions of contract set out in this document and (unless the context otherwise requires) includes any CONSULTANT special terms and conditions agreed in writing between the CONSULTANT and the COMPANY.
- "CONTRACT" means the contract for the provision of specialist project and engineering, management consultancy services.
- "EFFECTIVE DATE" means the agreed date [xxxxxxx] for the commencement of the services.
- "PROGRAMME" means the time to complete the services from the effective date as defined in the schedule of work contained within the contract.
- "PRICE" means the lump sum contract price for the services against the schedule defining the services contained within the contract, payable upon completion of those services.
- "SERVICES or WORKS" means the Services or Works (if any) described in the contract.
- "SPECIFICATION" includes any plans, drawings, data or other information relating to the services.
- "WRITING" includes letter, email, facsimile transmission and comparable means of communication.



**2. BASIS OF PROVISION OF CONSULTANCY SERVICES**

- 2.1 These conditions are deemed to be accepted by the COMPANY by virtue of an instruction issued to proceed with the works.
- 2.2 In the event of any conflict between the Conditions and the provisions of an Order issued by the COMPANY, the former shall prevail unless expressly stated otherwise.
- 2.3 No variation to the Order or these conditions shall be binding unless agreed in writing between the authorised representatives of CONSULTANT and the COMPANY.
- 2.4 The CONSULTANT may assign substitute personnel not named in schedule of services but the COMPANY retains the absolute right of veto over any substitute or delegated COMPANY where the substitute is not technically acceptable, where he has a conflict of interest with COMPANY or if he is not acceptable for any reason to the COMPANY.
- 2.5 The Works detailed herein are to be undertaken in the CONSULTANTS's office, the COMPANY's office or other sites, as necessary and agreed by both the COMPANY and the CONSULTANT.

**3. DURATION**

- 3.1 The Effective Date for the Contract will be [xxxxxx]
- 3.2 The Completion date for the lump sum services will be [xxxxxx]

**4. INDEMNITIES AND INSURANCE**

- 4.1 The CONSULTANT shall exercise all reasonable professional skill, care and judgement in the performance of the work, shall abide by the terms and conditions of this contract and shall use its best efforts to complete the works in a professional manner and in accordance with industry, engineering, construction and management practices and norms and latest proven state-of-the-art technologies. To the extent that the CONSULTANT produces defective work by virtue of a lack of professional skill, care and judgement exercised in accord with accepted industry, engineering, construction and management practices and norms and latest proven state-of-the-art technologies, the CONSULTANT will correct the defects at his own cost in his own time.
- 4.2 The COMPANY shall indemnify and hold CONSULTANT harmless against any/all claims, liabilities, costs, damages and expenses of every kind and nature with respect to:
  - i) sickness, injury or death of any person employed directly or indirectly by the COMPANY any third party or any subcontractor
  - ii) damage to or destruction of any property or equipment of the COMPANY or any third party any loss, claim or action bought against CONSULTANT by any third party, for any reason whatsoever in connection with this agreement
- 4.3 Neither CONSULTANT nor the COMPANY shall be liable to the other by way of indemnity or by reason of any breach of the Contract or of a statutory duty or by reason of tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever that may be suffered by the other.
- 4.4 Notwithstanding any provision in this agreement or the identification of any individual in this agreement all duties obligations and liabilities arising under or by virtue of this Agreement or

which may arise by virtue of common law or statute from the performance of any work contemplated by this agreement shall be owed or incurred exclusively by the CONSULTANT and not by any employee or member (including any officer or director) of the CONSULTANT. The COMPANY acknowledges that no such individual owes or shall owe any such duty or obligation or shall incur any such liability to the COMPANY and agrees that the COMPANY will not seek to make liable any such individual for any act, default, omission or negligence committed by the individual whatsoever and irrespective of how such liability may arise

- 4.5 The parties to this Agreement do not intend that any term of this Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.

## **5. HEALTH AND SAFETY AT WORK**

- 5.1 Should the services require attendance on a construction site, railway or production plant the COMPANY shall ensure that the CONSULTANT's employees are provided with a safety induction, at the commencement of the engagement period, on all Health and Safety requirements and procedures affecting the provision of the services. If additional training is required this shall be provided by the COMPANY at no charge.
- 5.2 CONSULTANT confirms that their employees whilst performing the services shall be required to fully comply with both the COMPANY's and Statutory Health and Safety requirements and procedures at all times.

## **6. SCOPE AND PROGRAMME OF SERVICES**

- 6.1 The scope of services and the programme are as strictly defined in the schedule of services in Annexe 1 herein.
- 6.2 The COMPANY shall not control, nor have any right of control as to how the CONSULTANT is to perform the Contract Works. The COMPANY recognises that the CONSULTANT offers specialist services at a high level of expertise and that the CONSULTANT, as an independent entity, will use his own initiative in how the Works are to be completed and will have flexibility as to the hours worked and at which location, but will make all reasonable attempts to comply with overall deadlines and operating requirements regarding working hours and security.
- 6.3 The CONSULTANT will provide its own equipment and tools as required to perform the contract works.
- 6.4 The COMPANY may at any time change the Scope of Works by giving written notice to the CONSULTANT. The CONSULTANT shall then provide any applicable cost adjustment, to the COMPANY, for the change in the Scope of Works in accordance with the schedule of reimbursable rates defined in Annexe 2.
- 6.5 The CONSULTANT is required to ensure that its employees fully comply with the COMPANY Computing and IT Procedures. In order to protect the COMPANY's computer systems from virus attack, computer discs may not be used in conjunction with any COMPANY computer without the approval of the COMPANY Hirer's Computer Services Manager. This includes all floppy and hard discs used in conjunction with external systems, including personal and corporate equipment offsite.

## **7. CONFIDENTIALITY**

- 7.1 The CONSULTANT shall accept the conditions of confidentiality attached to the Contract for Services to the Hirer, by signing the attached Confidentiality Statement.

## 8. CHARGES FOR SERVICES

- 8.1 The COMPANY shall pay the lump sum amount for the services defined in Annexe 1. Upon completion of each element (or CTR) of the work, CONSULTANT may issue an invoice and shall be paid by the COMPANY.
- 8.2 Travelling, hotel, disbursements or any other expenses (not defined in schedule of services as lump sum items, Annexe 1, shall be charged at cost plus **xx%**.
- 8.3 VAT at 17.5% shall be charged in addition to 7.1 and 7.2 above
- 8.4 The lump sums defined in Annexe 1 and rates in Annexe 2 are valid for 60 days from the quotation date, thereafter, CONSULTANT reserve the right to alter the rates from time to time, upon notification to the COMPANY, with immediate effect.
- 8.5 Unless the COMPANY queries in writing, with good reason, within 7 days of receipt of the invoice, the invoice shall be deemed accepted by the COMPANY and payable, in full, within **x** days of receipt of the invoice.
- 8.6 Overdue invoices will be charged in accordance with Late Payment of Commercial Debts (Interest) Act 1998 per working day invoice is overdue.
- 8.7 Payment shall constitute the payment of cleared funds in to CONSULTANT bank account either by means of transfer or by cheque, payable to "Appletree Recruitment Ltd."

## 9. VARIATION

- 9.1 The COMPANY may at any time change the Scope of Works by giving written notice to the Consultant. The Consultant shall then confirm the applicable cost adjustment, to the COMPANY, for the change in the Scope of Works subject to clause 7. and rates defined in Annex 2, herein.
- 9.2 Should defined elements of the work (Annexe 1) not reasonably be required by the COMPANY, written notice shall be given by the COMPANY to suspend work and upon receipt of the instruction CONSULTANT shall stop work and within 14 days shall confirm the extent of work carried out previous to the instruction been received. Any work carried out before receipt of the instruction shall be reimbursed by the COMPANY according to the schedule of rates, Annexe 2. Like wise any expenses incurred shall be reimbursed as per clause 6.2 above.
- 9.3 CONSULTANT retains the right not to proceed with a work instruction should it have reasonable grounds not to proceed and shall notify the COMPANY within 7 days of receipt of the instruction accordingly.

## 10. TERMINATION

- 10.1 In the case that either party to this Contract is in breach of any material term and has failed to rectify the breach within **[xxx]** days of receiving a written notice from the other party specifying the breach, then the other party may terminate the Contract immediately by giving further written notification.
- 10.2 The COMPANY may terminate this Contract at its option by giving **[xxxx]** days notice in writing. On the date of such termination, whether for breach or for convenience, the CONSULTANT shall discontinue performance of the works and shall wholly comply with the COMPANY's instructions regarding such termination.
- 10.3 Without prejudice to any other rights and remedies of CONSULTANT under the Contract, CONSULTANT may terminate the Contract with forthwith by written notice to the COMPANY if:

- i) The COMPANY defaults in the performance of its obligations under the Contract The COMPANY becomes insolvent,
- ii) be declared bankrupt or go into liquidation, or shall pass a resolution for winding up or if a Court shall make an Order to that effect, or shall have a Receiving Order made against it.

10.4 In the event of 10.1, 10.2 or 10.3 above The COMPANY shall pay the CONSULTANT in respect of works satisfactorily performed up to the date of termination and, except in the case of termination for the CONSULTANT's breach of a material term, other reasonable associated costs in accordance with Annexe 1, including fee, incurred by the CONSULTANT in complying with COMPANY's instructions, in accordance with the terms of the Contract.

10.5 Should the CONSULTANT be in material breach of the contract within the first month of the effective date and the CONSULTANT has failed to rectify the breach in accordance with clause 10.1 then the COMPANY will be entitled to recover the proportion of advance payments made from the date of the termination notice to the end of the first month in accordance with the rates set out in Annexe 1.

**11. WAIVER**

11.1 No waiver by either party of any provision of the Contract shall be binding unless made expressly and expressly confirmed in writing. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

**12. REMEDIES**

12.1 The rights and remedies of CONSULTANT set forth in these General Conditions are not exclusive and are in addition to all other rights and remedies provided by law.

**13. APPLICABLE LAW AND ARBITRATION**

13.1 The form, validity and performance of the Contract shall be governed by the laws of England.

13.2 Unless otherwise agreed, all disputes between the parties which cannot be settled amicably shall be referred for arbitration by a single arbitrator chosen with the consent of both parties, or, failing such consensus, chosen at the request of one of the parties by the President for the time being of the Institution of Mechanical Engineers, in accordance with and subject to current statutory provisions.

**Signed**  
For Appletree Recruitment Ltd

.....  
Director

.....  
Date

For **[Client XX]**

.....  
Date

.....

**Annexe 1      Schedule of Services**

<b>Work Element (CTR)</b>	<b>Description of Services</b>	<b>Programme from Effective Date</b>	<b>Lump Sum Amount (£)</b>
<b>Total Lump Sum</b>			

SAMPLE

Prices exclusive of VAT, chargeable at 17.5%

**Validity:**

Prices are valid for 60 days from: **1<sup>st</sup> February 2004**

**Inclusions:**

Lump sum prices include the cost of provision of computer equipment, safety equipment, occasional travel to COMPANY offices, Richmond as required

**Exclusions**

Lump sum prices exclude the cost of mileage (other than to COMPANY head office), air fares, hotels, visas, procurement of specialist materials, specialist software (anything other than MS office applications, Suretrak, MS Project 98) or standards.

COMPANY to provide all Professional Indemnity cover related to the works.

COMPANY to provide all Insurance related to travel, health and repatriation of Consultant's employees whilst in Libya and any other country outside UK.

**Annexe 2      Schedule of Rates**

For Additional services performed in the UK /Europe the following daily rates shall be charged:

<b>SR no.</b>	<b>Personnel Category</b>	<b>Daily Rate (max [8]hours) £</b>
1	Director	[£ XX. XX]
2	Principal Engineer	[£ XX. XX]

**Travel**

mileage :35 p/mile , taxi or 2nd class rail fare @ cost plus [xx %] handling fee

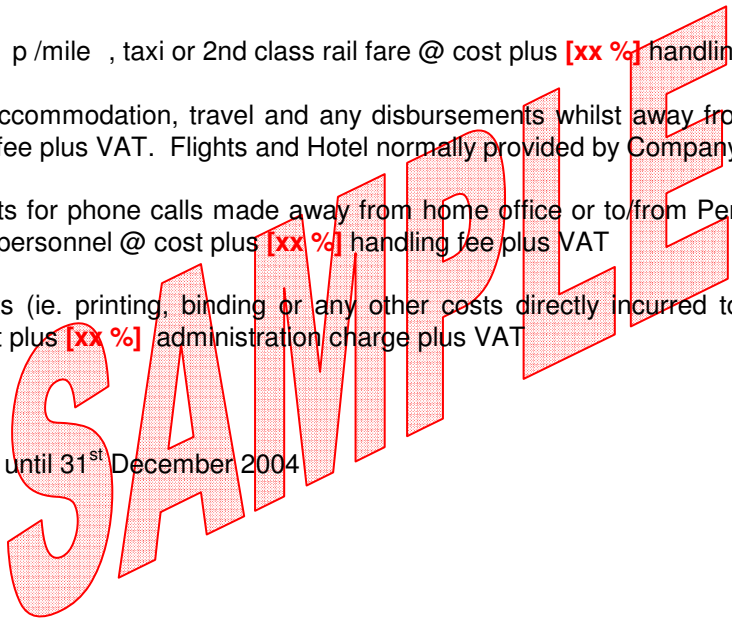
Subsistence, accommodation, travel and any disbursements whilst away from home office @ cost plus 2.5% handling fee plus VAT. Flights and Hotel normally provided by Company

Telephone costs for phone calls made away from home office or to/from Penspen offices/Client or other project related personnel @ cost plus [xx %] handling fee plus VAT

Invoicable costs (ie. printing, binding or any other costs directly incurred to pursue the project will be charged at cost plus [xx %] administration charge plus VAT

**Validity:**

Rates are valid until 31<sup>st</sup> December 2004



## **Annexe 3      Specification of Services**

### **A3.1    General**

This Scope of Work details the Tasks, Objectives, Deliverables and Deadlines for the works relating to **[Project X ]** which the Consultant is to undertake in this Contract for Services as detailed below.

### **A3.2    Project Definition**

#### **The Consultant will be required to:**

- **Project Manage the works**
- **Undertake design works, checking and authorisation of designs as required**
- **Schedule and programme the works**
- **Monitor project progress**
- **Report project progress and Cost to Senior Penspen Management**
- **Undertake communication with Zueitina as Penspen representative**
- **Represent Penspen's commercial and technical interests for the project**
- **Comply with Penspen QA and HSE procedures**

**The schedule of work for the Consultant and production of deliverables shall be discussed and agreed in consultation with the Project Manager.**

### **A3.4    Additional Services**

The COMPANY/ Client may request the Consultant to undertake tasks over and above those detailed herein which will form a separate Scope of Work.

### **A3.5    Deliverables**

All documentation deliverables shall generally consist of one hard copy and one electronic copy. The Consultant shall deliver all deliverables to the Hirer / Client on dates to be mutually agreed.

**SAMPLE**

**Annexe 4 Confidentiality Statement**

Penspen Ltd.

**CONFIDENTIALITY STATEMENT**

The Consultant shall keep confidential all information acquired from Penspen Ltd. and their clients and shall not disclose to third parties nor use except in the carrying out of work for Penspen any information which becomes known to the Consultant in connection with the provision of the services, except information which at the time of disclosure is in the public domain.

With respect to the use of Computer Software, the Consultant shall keep confidential the program and the documentation source codes and program listings thereto, and each part thereof, and shall not copy or disclose the same to any third party without prior written consent of Penspen Ltd.

Signed: .....

Appletree Recruitment Ltd

Date:

**SAMPLE**