

ARROW ECS Limited

Terms and Conditions

For the Supply of Consultancy Services

PARTIES

- ARROW ECS LIMITED** (Company Number 3952678) whose registered office is Nidderdale
(1) House, Beckwith Knowle, Otley Road, Harrogate, North Yorkshire HG3 1SA ("**Arrow ECS**"); and
(2) [**CUSTOMER**] [**LIMITED**] [/] [**PLC**] (Company Number []) whose registered office is at [] ("**the Customer**").

IT IS AGREED THAT:

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context requires otherwise, the following words and expressions shall have the following meanings:

- (a) "**Business Day**" means any day which is not a Saturday, Sunday or bank or other public holiday in England and Wales.
- (b) "**Charges**" means the charges payable by the Customer to Arrow ECS for the Consultancy Services as more particularly described and detailed in the Scope of Works.
- (c) "**Confidential Information**" means all information provided by the Parties to each other, excluding any information which is expressly stated not to be confidential by the Party providing such information.
- (d) "**Consultancy Services**" means the services to be provided by Arrow ECS to the Customer as described in the attached Scope of Works and in accordance with these Terms and Conditions.
- (e) "**Excluded Loss**" means
 - (i) any loss or damage arising as a result of any loss of or corruption to data (whether temporary or permanent); and /or
 - (ii) loss of profits, loss of revenue, damage to reputation, damage to goodwill, loss of business, loss of anticipated savings, third party claims and consequential loss. Arrow ECS strongly advises the Customer to insure against all such potential loss, damage, expense or liability.
- (f) "**Force Majeure**" means any event which is beyond the reasonable control of Arrow ECS whereby it is prevented from or delayed in the carrying on of its business including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to Arrow ECS to terminate the Agreement.

- (g) **"Group Company"** means in respect of each Party, any subsidiary company of that Party, any holding company of that Party or any subsidiary company of such holding company ("subsidiary" and "holding company" shall bear the meanings as ascribed under Sections 736 and 736A of the Companies Act 1985).
- (h) **"Parties"** means collectively, Arrow ECS and the Customer.
- (i) **"Party"** means, as the context requires, either Arrow ECS or the Customer.
- (j) **"Scope of Works"** means the document describing the Consultancy Services Arrow ECS will provide to the Customer in accordance with these Terms and Conditions.
- (k) **"Term"** means the period during which the Consultancy Services are to be performed for the benefit of the Customer by Arrow ECS.
- (l) **"the Agreement"** means this agreement between the Parties for the supply of the Consultancy Services by Arrow ECS to the Customer in accordance with these Terms and Conditions.

1.2 In these Terms and Conditions, unless the context requires otherwise:

- (a) any reference to a Clause or sub-Clause is to the relevant Clause or sub-Clause in these Terms and Conditions;
- (b) Clause headings are for convenience only and shall not affect the interpretation of these Terms and Conditions;
- (c) words denoting the singular include the plural and vice versa;
- (d) words denoting any gender include all genders;
- (e) any reference to "persons" includes companies and all other legal entities; and
- (f) any reference to a statute, statutory provision, subordinate legislation or code of practice shall be construed as referring to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time.

2 PROVISION OF THE CONSULTANCY SERVICES

2.1 Arrow ECS shall perform the Consultancy Services for the Customer with reasonable skill and care and in accordance with the Scope of Works.

3 POSTPONEMENT OF THE PERFORMANCE OF CONSULTANCY SERVICES AND CANCELLATION OF AGREEMENT

3.1 The dates for the performance of the Consultancy Services shall be as set out in the Scope of Works. Such dates cannot be altered or the provision of the Consultancy Services cancelled by the Customer except in accordance with the provisions of this Clause 3.

- 3.2 In the event that the Customer wishes to postpone the performance of the Consultancy Services then it shall inform Arrow ECS of this in writing as soon as possible. In the event that Arrow ECS consents to such postponement then it shall use its reasonable endeavours to re-assign individuals allocated to the performance of the Consultancy Services to other customers. In the event that such re-assignment is not possible then the Customer shall be liable to pay the Charges in accordance with the postponement provisions detailed in the Scope of Works, in addition to any charges which apply to the actual performance of the Consultancy Services by Arrow ECS at a later date.
- 3.3 In the event the Customer cancels the Agreement it shall be liable to pay the Charges in accordance with the cancellation provisions detailed in the Scope of Works.
- 3.4 The Customer acknowledges and agrees that any Charges which may become payable by it pursuant to Clause 3.2 or 3.3 represent the actual loss and damage which would be suffered by Arrow ECS as a result of the postponement / cancellation of the performance of the Consultancy Services and that any such payments are neither oppressive nor penal in nature.

4 CHARGES

- 4.1 In the absence of terms specified in the Scope of Works to the contrary (in which circumstances such terms will apply), Arrow ECS will invoice the Customer on the last Business Day of the month, the Charges in respect of the Consultancy Services performed by it during that month.
- 4.2 Invoices shall be paid by the Customer within 30 days of the date of invoice. All Charges are exclusive of value added tax which (if applicable) shall be payable by the Customer in addition.
- 4.3 The Customer shall not be entitled to reject any invoice submitted by Arrow ECS by reason of such invoice failing to state any purchase order number or other reference of the Customer unless the Customer has supplied such purchase order number or other reference to Arrow ECS at the time of entering into the Agreement.
- 4.4 The Customer shall not be entitled to make any deduction from any amount due from it to Arrow ECS nor shall the Customer be entitled to exercise any right of set-off except that in the event that the Customer has a bona fide dispute as to the amount of any invoice issued by Arrow ECS which it has informed Arrow ECS of in writing within fourteen days of the date of invoice, then the Customer shall be entitled to withhold payment of the amount which it disputes pending resolution of that dispute (whether pursuant to the dispute resolution procedure set out in Clause 9.1 or otherwise). Following resolution of such dispute, the Customer shall pay to Arrow ECS within seven days any amount which it agrees or is ordered to pay including, if applicable, interest calculated in accordance with Clause 4.5.
- 4.5 Arrow ECS reserves the right to claim interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 after as well as before judgement.

5 PROVISION OF CUSTOMER INFORMATION

- 5.1 Prior to the commencement of the performance of the Consultancy Services by Arrow ECS, the Customer shall provide Arrow ECS with all such information as may be reasonably requested by Arrow ECS including, but not limited to, through the completion of any documents / questionnaires provided to the Customer by Arrow ECS. All such information must be supplied by the Customer to Arrow ECS at least one Business Day prior to the commencement by Arrow ECS of the performance of the Consultancy Services.
- 5.2 If the Customer fails to provide Arrow ECS with the information referred to in Clause 5.1 within the time period referred to then Arrow ECS shall be entitled to treat such failure as a request by the Customer to postpone the performance of the Consultancy Services in which case, the provisions of Clause 3.2 shall apply.
- 5.3 If, as a result of the information provided by the Customer pursuant to Clause 5.1, Arrow ECS is of the reasonable opinion that the project in respect of which the Consultancy Services are to be provided cannot be completed in accordance with the terms of the Agreement due to issues which cannot be resolved prior to the commencement of the provision of the Consultancy Services, then provision of the Consultancy Services shall be deemed to have been cancelled by the Customer and the Customer shall be liable to pay the Charges in full.
- 5.4 The Customer warrants that all information provided by it pursuant to Clause 5.1 shall be complete, accurate and not misleading.
- 5.5 The Customer shall provide Arrow ECS with all such access to any premises / equipment of the Customer which Arrow ECS reasonably requires to enable it to perform the Consultancy Services. The Customer warrants that it shall comply with all applicable health and safety legislation whilst any employee or agent of Arrow ECS is present at its premises and the Customer will indemnify Arrow ECS against all losses, claims and demands suffered by Arrow ECS as a result of its employee or agent attending the premises in the event the Customer fails to comply with such legislation.

6 TERMINATION

- 6.1 Without prejudice to its other rights or remedies, either Party shall be entitled to terminate the Agreement prior to the expiry of the Term by serving written notice of termination on the other in the event that the other Party:
- (a) commits a material breach of any of its obligations under the Agreement; or
 - (b) in the case of a material breach which is capable of remedy, is not remedied by the Party in breach within thirty days following receipt of written notice from the other Party specifying the breach and requiring its remedy; or
 - (c) enters into any compromise or arrangement with its creditors, becomes unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986 (if a body corporate) or Section 268(1) of the Insolvency Act 1986 (if an individual) or within the meaning of the Insolvent Partnerships Order 1994 (if a Partnership) , if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company), if a petition is presented to court (which is not withdrawn within 14 days), or if a receiver, manager, administrative receiver or administrator is appointed in respect of the whole of any part of the other Party's assets; or

(d) ceases or threatens to cease to carry on its business.

6.2 Without prejudice to its other rights or remedies, Arrow ECS shall be entitled to terminate at its discretion the Agreement in the event that the Customer fails on three or more occasions to pay any invoice (to the extent that the Customer has not disputed it in accordance with Clause 4.4 within fourteen days of its due date).

6.3 Termination of the Agreement shall not effect the validity or enforceability of any term of these Terms and Conditions which expressly or by implication is intended to survive termination.

7 LIMITATION OF LIABILITY

7.1 Neither Party seeks to limit its liability in respect of death or personal injury caused by that Party's negligence, for fraudulent misrepresentation, nor for liability pursuant to Part 1 of the Consumer Protection Act 1987 and no provision of these Terms and Conditions shall be interpreted as such.

7.2 The total liability of each Party for all claims received from the other in connection with the provision of the Consultancy Services shall be limited to the amount of Charges paid or payable by the Customer.

7.3 In no circumstances shall either Party be liable to the other for any Excluded Loss.

7.4 In the event that the provision of Consultancy Services is terminated by Arrow ECS prior to the expiry of the Term by reason of breach or default by the Customer or if the Customer purports to terminate the provision of the Consultancy Services in breach of these Terms and Conditions, then the provisions of Clause 7.3 shall not act so as to prevent Arrow ECS from recovering from the Customer any Charges which would otherwise have been payable by the Customer were it not for such earlier termination.

8 FORCE MAJEURE

8.1 No failure or omission by either Party to perform or to carry out its obligations in accordance with the Agreement (other than in respect of any obligation to pay for the Consultancy Services) shall give rise to any claim by the other or be deemed a breach of the Agreement if such failure or omission results directly from an event of Force Majeure.

9 DISPUTE RESOLUTION

9.1 In the event of any dispute arising between the Parties under the Agreement then the Company Secretary of Arrow ECS and a nominated representative of the Customer shall seek to resolve such dispute in good faith as soon as possible. In the event that such dispute is not resolved within 14 days from commencement of such discussions then either Party shall be permitted to take such action in respect of the dispute as permitted by law / these Terms and Conditions.

10 NOTICES

10.1 Any notice or other communication to be given under these Terms and Conditions shall be in writing (addressed to the Company Secretary of Arrow ECS should such notice or communication be sent by the Customer), shall be deemed to have been duly served on, given to or made in relation to a Party if it is left at the authorised address of that Party or posted by pre-paid first class post addressed to that Party at such address and shall if:

- (a) personally delivered, be deemed to have been received at the time of delivery; or
- (b) if posted to an inland address in the United Kingdom, be deemed to have been received on the second Business Day after the date of posting and if posted to an overseas address, be deemed to have been received on the fifth Business Day after the date of posting.

PROVIDED that where, in the case of delivery by hand or fax, delivery or transmission occurs after 4.00 pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00 am on the next following Business Day.

10.2 For the purposes of Clause 10.1, the authorised address of Arrow ECS is its registered office for the time being and, in the case of the Customer, the address set out in these Terms and Conditions. Either Party may notify the other Party in writing from time to time of a change in its authorised address in accordance with the requirements of that Clause 10.1.

10.3 For the avoidance of doubt, whilst it is acknowledged that the Parties may make operational communications concerning this Agreement via electronic mail, notice will not be validly served under this Agreement by electronic mail.

11 MISCELLANEOUS

11.1 These Terms and Conditions and the documents referred to in them contain the entire agreement and understanding of the Parties and supersede all prior arrangements and understandings (both oral and written) relating to the subject matter of these Terms and Conditions (including, but not limited to, any proposals submitted to the Customer by Arrow ECS).

11.2 These Terms and Conditions shall prevail over any terms and conditions referred to by the Customer whether in negotiations or otherwise.

11.3 Neither Party has relied upon any warranty or representation except as expressly provided for or referred to in these Terms and Conditions. All warranties, conditions, terms and representations, express or implied (whether by law, statute or otherwise) if not expressly incorporated into these Terms and Conditions are excluded to the fullest extent permitted by law.

11.4 Nothing in these Terms and Conditions is intended to nor shall it create any partnership, joint venture, agency or relationship of employer / employee, the Parties being with respect to each other independent contractors.

- 11.5 The Customer will not assign or novate its rights and / or responsibilities under the Agreement without the prior written consent of a Director of Arrow ECS, such consent not to be unreasonably withheld or delayed. For the avoidance of doubt, Arrow ECS will not be deemed to have acted "unreasonably" for the purposes of this Clause 11.5 should it decline to consent to an assignment and / or novation to a person who is not of an equivalent financial standing / creditworthiness as the Customer.
- 11.6 Arrow ECS is entitled to assign and/or novate its rights and / or responsibilities under the Agreement to any Group Company.
- 11.7 Each right or remedy of Arrow ECS under these Terms and Conditions is without prejudice to any other right or remedy of Arrow ECS whether under these Terms and Conditions or not.
- 11.8 If any clause, covenant or provision of the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Agreement and the remainder of such provision shall continue in full force and effect.
- 11.9 Failure or delay by Arrow ECS in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement.
- 11.10 Any waiver by Arrow ECS of any breach of, or any default under, any provision of the Agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Agreement.
- 11.11 No variation, supplement, deletion or replacement of or from these Terms and Conditions (or any document referred to in them) shall be effective unless and until made in writing and signed by or on the behalf of the Customer and a Director of Arrow ECS.
- 11.12 Other than to its responsible employees, sub-suppliers, professional advisers who need to have such Confidential Information disclosed to them or except insofar as a Party may have a statutory duty to disclose any Confidential Information of the other Party or is required by law to do so, neither Party shall during the Term or at any time thereafter divulge or communicate to any person, firm or company any Confidential Information of the other Party.
- 11.13 Each Party shall be entitled to use the Confidential Information of the other only in connection with the performance of the Consultancy Services under the Agreement and not otherwise or for its benefit or the benefit of any third party.
- 11.14 The restriction set out in Clauses 11.12 and 11.13 shall continue after the termination or expiry of the Term without limit of time but shall cease to apply to any Confidential Information which may lawfully come into the public domain other than through the act or default of a Party.

- 11.15 The Agreement may be executed in any number of counterparts provided that they shall not become effective until each Party has executed a counterpart and exchanged it with the other.
- 11.16 The Parties do not intend that any term of the Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it nor shall the consent of any third party be required in respect of any amendment to be made to these Terms and Conditions which is/are agreed between the Parties.
- 11.17 The Agreement shall be governed and construed in accordance with the laws of England and Wales and the Parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED THIS AGREEMENT:

Accepted On Behalf of (the Customer)

Accepted On Behalf of Arrow ECS

(If signing on behalf of a body corporate) – I am
duly authorised to sign these Terms and Conditions
on behalf of the above named

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____