

**INCHMERE  
DESIGN LIMITED**

**STANDARD TERMS OF BUSINESS**

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**INCHMERE DESIGN LIMITED**  
**STANDARD TERMS OF BUSINESS**

Inchmere Design Limited (“**the Consultant**”) contracts to provide design and installation services on the terms and subject to the conditions as set out below with its Client.

**AGREED TERMS**

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Change Agreement:** an agreement made under clause 4.3.

**Client:** the person named in the Fee Proposal or a person duly authorised by the Client to act on its behalf for the purposes of this agreement and identified to the Consultant by written notice from the Client.

**Client Designs:** the specific designs arising out of or relating to the Design Services, which are written, developed, generated or otherwise provided by the Consultant pursuant to this agreement which are external to and exclude the Consultant Technology.

**Client Specifications:** the specifications agreed between the Client and the Consultant which sets out the Client's requirements of the Client Design contained in the Fee Proposal.

**Commencement Date:** the date on which this agreement becomes effective as specified in the Fee Proposal.

**Completion Date:** the estimated date specified in the Implementation Plan (which may be varied in accordance with the provisions of clause 3).

**Confidential Information:** information of commercial value which has been kept confidential by the party from whom the information originates and which has not come into the public domain during the term of this agreement in breach of any obligation of confidence.

**Consultant:** Inchmere Design Limited, a private limited company incorporated in England and Wales whose registered number is 05631437 and whose registered address is Unit 114 Boston House, Grove Technology Park, Wantage, Oxon OX12 9FF.

**Consultant Technology:** the patents, the know how and all other inventions, designs, information, specifications, formulae, data, processes, methods, techniques and other technology necessary for or relating to the development, manufacture, installation, implementation, use, marketing, distribution, sale, and disposal of the Design Scheme and to provision of the Design Services used in, generated or otherwise created in the performance of this agreement including any improvements and enhancements in the same.

**Design Fees:** the fees and payments for the Design Services as set out in the Fee Proposal and in Clause 5.

**Design Scheme:** the design scheme to be installed in the Equipment as specified in the Documentation.

**Design Services:** the scope of services as set out in the Fee Proposal and in Clause 2.3 below.

**Dispute Resolution Procedure:** the procedure for dealing with disputes under this agreement as set out in clause 24.

**Documentation:** the layouts, specifications supplied by the Consultant as part of its Design Services.

**Equipment:** the equipment ordered by the Client and/or which may be to procure and/or supplied by the Consultant or its authorised third parties as agreed in the Fee Proposal.

**Fee Proposal:** the Fee Proposal provided by the Consultant in writing detailing the Design Services to be undertaken.

**Implementation Plan:** the time schedule and sequence of events for the performance of this agreement set out in the Fee Proposal, which may be varied in accordance with the provisions of clause 3.

**Intellectual Property Rights:** means all patents, rights in inventions, rights in designs, trade marks, trade and business names and all associated goodwill, rights to sue for passing off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know how and trade secrets) and all other similar or equivalent rights subsisting now or in the future in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term.

**Project Manager:** the Consultant employee appointed under clause 10.2 who has overall responsibility for the Design Services.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax.

- 1.2 A reference to one gender includes a reference to the other gender.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.6 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.7 A variation of the agreement shall be in writing and signed by or on behalf of all parties.
- 1.8 The schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to **this agreement** means this agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.9 **Writing** or **written** includes faxes and e-mail and any other form of electronic communication, except where expressly provided to the contrary.

## **2. DESIGN SERVICES TO BE PROVIDED**

- 2.1 In consideration of the Client paying the Design Fees, the Consultant agrees to provide the Design Services for the Equipment as set out in the Fee Proposal.
- 2.2 In the event of any conflict or inconsistency between the terms of the Fee Proposal and any conditions detailed in this agreement, the terms of the Fee Proposal shall prevail. For the avoidance of doubt, the Fee Proposal shall effectively be deemed to be **this agreement** when the Client signs and accepts the terms contained therein.
- 2.3 The Consultant shall provide such Design Services included in the Fee Proposal. The copyright and other intellectual property rights of whatever nature in the Design Services are and shall remain the property of the Consultant and the Consultant reserves the right to use such rights for any other party or parties.

- 2.4 The Client may request changes to the Design Services in accordance with the procedures set out in clause 3.3.
- 2.5 The Consultant shall carry out the Design Services with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the Design Scheme by the Completion Date.
- 2.6 The Client shall co-operate with the Consultant in any manner reasonably required by the Consultant in order to carry out the Design Services, including, but not limited to, provision of information and data, ensuring and procuring that employees and/or contractors of the Client will cooperate and liaise with the Consultant, provision of access to the Equipment for the Consultant's employees and contractors and provision of supplies reasonably required by the Consultant, such as a reliable source of power.
- 2.7 Notwithstanding the foregoing, time is not of the essence in the performance of this agreement by the Consultant. Unless the Consultant has prior notice in writing from the Client, the Consultant shall complete the Design Services within a reasonable period which it deems to be reasonable in the circumstances.

### **3. IMPLEMENTATION PLAN, DELAYS AND EXTENSION OF TIME**

- 3.1 Both parties shall perform their obligations under this agreement in accordance with the Implementation Plan.
- 3.2 The Consultant shall complete the Design Services in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to the provisions of clause 3.3 and clause 3.4.
- 3.3 Subject to Clause 3.4 and Clause 3.5 below, the Consultant shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one or more of the following events occur:
- (a) a variation to the Design Scheme is made at the Client's request pursuant to the Design Scheme changes procedure set out in clause 4; or
  - (b) a force majeure event occurs as described in clause 17; or
  - (c) delay is caused in whole or in part by an action or omission of the Client, its employee, agent or third party contractor or suppliers which may include, without limitation, the lack of access to the Equipment or the lack of preparation of the Equipment for the Design Scheme to be installed.

For the avoidance of doubt, delays under Clause 3.3 will not be treated as a breach by the Consultant of the terms of this agreement. The Consultant will inform the Client as soon as practicable should there be any delay caused by events beyond its control.

- 3.4 If the Consultant is entitled to an extension of time under clause 3.3, it shall give written notice to the Client not later than seven (7) days after the beginning of the event. Such notice shall specify the event relied on, and, in the case of a force majeure event under clause 3.3(b), shall estimate the probable extent of the delay.
- 3.5 Any delays resulting from an event set out in Clause 3.3 may result in additional costs for the Consultant. In this case, the Consultant is entitled to levy a further charge to the Client, if the Consultant considers it appropriate.
- 3.6 The Client and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

### **4. DESIGN SCHEME CHANGES**

- 4.1 The Client may, by giving at least 14 (fourteen) days' written notice to the Consultant, request a change to the Design Scheme or Design Services.

4.2 Within seven (7) days of receipt of such notice, the Consultant shall, at its standard rates then in force, prepare for the Client a written estimate of any increase in the Design Services, and of any effect that the requested change would have on the Implementation Plan and Completion Date.

4.3 Within three (3) days of receipt of the written estimate referred to in clause 4.2, the Client shall inform the Consultant in writing of whether or not the Client wishes the requested change to be made. If the change is required, the Consultant may not make the requested change until the parties have agreed and signed a written agreement (**Change Agreement**) specifying, in particular, any consequential changes to the Implementation Plan and Design Services.

## **5. DESIGN FEES, PAYMENT AND INTEREST**

5.1 The Design Fees are specified in the Fee Proposal. The Client shall in addition pay to the Consultant the amount of any tax, duty or assessment, including but not limited to any applicable VAT, which the Consultant is obliged to pay and/or collect from the Client in respect of any supply under the agreement (other than tax on the Consultant's income). The Design Fees are subject to any changes as set out in Clause 4 above.

5.2 In the event that by reason of any change in applicable laws, regulations or in the interpretation by any governmental authority charged with the administration, application or interpretation thereof, or by any requirement or directive of any governmental authority, the Consultant is subject to any tax, levy, impost, charge, fee, duty, deduction or withholding of any kind whatsoever, the Client shall pay to the Consultant, upon demand being made by the Consultant, such additional cost or reduction.

5.3 The Consultant shall submit invoices in accordance with the Fee Proposal. The Client shall make payment of each invoice by the due date stated in that invoice or within thirty (30) days of receipt of the invoice, whichever is the later.

5.4 Where a sum is required to be paid under this agreement but is not paid on the date the parties agreed, the person due to pay the sum shall also pay an amount equal to interest calculated under Clause 5.4 below on that sum for the period beginning with that date and ending with the date the sum is paid (and the period shall run after as well as before judgment).

5.5 Where the payment of any invoice or any part of an invoice is not made in accordance with this Clause 5, the Consultant, without prejudice to its other rights under this agreement, or in law, shall be entitled to charge interest on the outstanding amount at the rate of three (3) per cent per annum above the Bank of England's legal interest rate, in force at the time, from the due date until the outstanding amount is paid.

5.6 This Clause 5 is without prejudice to any claim for interest under the law.

## **6. COMPLETION DATE AND DESIGN SCHEME ACCEPTANCE**

6.1 If the Client requests, the parties shall agree a Completion Date. On Completion Date, the Client or its representative shall be present in person with the Project Manager in order for the Project Manager to show the Client the Design Scheme that has been completed and the Client to acknowledge and accept that it is satisfied with the Design Services. If the Client fails to attend the meeting on the Completion Date, the Consultant may charge fees for attending further meetings to complete the same. The Client or his representative shall approve the Design Scheme and accept that the Design Services have been completed.

6.2 Subject to Clause 5 above, the Consultant is entitled to withhold completion if full payment of the Design Services has not been received.

**7. INDEPENDENT CONTRACTOR**

- 7.1 For the purpose of the Design Services, the Consultant is an independent contractor and shall not hold itself out as an agent of the Client except as expressly authorised in writing by the Client.
- 7.2 The Consultant shall have complete control of the Design Services and shall efficiently and competently direct and supervise its employees, agents and subcontractors who are carrying out the Design Services.

**8. CONFIDENTIALITY**

8.1 In relation to the Client's Confidential Information:

- (a) the Consultant shall treat as confidential all Confidential Information of the Client supplied under this agreement. The Consultant shall not divulge any such Confidential Information to any person except to its own employees and then only to those employees who need to know the same. The Consultant shall ensure that its employees are aware of, and comply with, the provisions of this clause 8;
- (b) the Consultant may provide any subcontractor with such Client's Confidential Information as it needs to know in order to perform its obligations relating to the Design Services, provided that such sub-contractor has first entered into a written obligation of confidentiality in terms similar to clause 8.1(a); and
- (c) the foregoing obligations shall remain in full force and effect notwithstanding any termination of this agreement.

8.2 In relation to the Consultant's Confidential Information:

- (a) the Client shall treat as confidential all Confidential Information of the Consultant contained or embodied in the Design Scheme or Documentation or otherwise supplied to the Client during the performance of this agreement;
- (b) the Client shall not, without the prior written consent of the Consultant, divulge any part of the Consultant's Confidential Information to any person other than:
  - (i) its representative; and
  - (ii) other employees of the Client who need to know the same for purposes relating to the Design Services;
- (c) the Client undertakes to ensure that the persons mentioned in clause 8.2(b) are made aware, prior to the disclosure of any part of the Consultant's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Consultant; and
- (d) the foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Licence or this agreement.

**9. PROPRIETARY RIGHTS**

- 9.1 The Consultant shall own all rights, title and interest including the Intellectual Property Rights in and to the Consultant Technology. The Consultant shall also own all right, title and interest in and to the software components and such other applications relating to the Design Scheme that are developed during the course of this agreement.
- 9.2 The Client shall own all rights, title and interest in the Client Designs.
- 9.3 The Consultant grants to the Client a non-exclusive, non-transferable, royalty-free licence to use the Consultant Technology in conjunction with the Client Designs for the limited purposes set out in this agreement.

**10. PROJECT MANAGEMENT**

- 10.1 No later than five (5) days after the Commencement Date, the Client shall notify the Consultant of the name of the person appointed as the Client Representative.
- 10.2 The Consultant shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Design Services and to whom all questions regarding this agreement can be referred. The name of the appointed individual shall be notified in writing to the Client.
- 10.3 The Client shall co-operate with the Project Manager and shall attend meetings scheduled by the Project Manager at reasonable intervals as agreed in the Fee Proposal.
- 10.4 The provision of employees, subcontractors and agents of the Consultant to carry out the Design Services shall be at the discretion of the Consultant.

**11. TERM OF AGREEMENT**

This agreement shall be effective from the Commencement Date as set in the Fee Proposal and shall continue in force until it is terminated in accordance with the provisions of this agreement.

**12. LIMITATION OF LIABILITY**

- 12.1 The Consultant's entire liability under this agreement or for any cause of action related to the Design Scheme shall be limited to the Design Fees paid by the Client. The Consultant shall not be liable for any indirect, special or consequential damages resulting from installation or use of the Design Scheme.
- 12.2 Upon approval of the Fee Proposal by the Client, the Consultant shall provide the Client with the Design Scheme in accordance with the Fee Proposal. The Consultant accepts no liability in the event the Client is not satisfied with the resultant design scheme or any other practical implications of the Design Scheme. Except for the express warranties stated herein, all warranties and conditions, express or implied, statutory or otherwise, on all services furnished hereunder, including without limitation, all implied conditions of satisfactory quality or fitness for a particular purpose are excluded to the extent permitted by law.
- 12.3 The Consultant shall not be responsible or in any way liable for:
  - (a) the application of the Design Scheme by a third party or employee engaged by the Client or for the safe and lawful application of all the different elements within the Design Scheme;
  - (b) any unauthorised modifications, use or improper application of the Design Scheme by the Client and/or its employees or third parties.
- 12.4 The exclusions in this Clause 12 shall apply to the fullest extent permissible at law, but the Consultant does not exclude liability for death or personal injury caused by the negligence of the Consultant, its officers, employees, contractors or agents for fraud, breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982, or any other liability which may not be excluded by law.

**13. PUBLICITY**

All publicity relating to the Design Services provided under this agreement including design team credits, shall credit the Consultant as the design scheme designers.

**14. TERMINATION**

- 14.1 Either party may terminate this agreement immediately by written notice to the other party if:
  - (a) the other party commits a material or persistent breach of any of its obligations under this agreement and (in the case of a breach capable of



being remedied) does not remedy such breach within 30 days of receiving from the other party written notice of the breach and a request to remedy the breach; or

- (b) any distress or execution is levied on the other party's property or if the other party has a receiver, administrator, administrative receiver or manager appointed over the whole or any part of its assets, becomes insolvent, compounds or makes any arrangement with its creditors, commits any act of bankruptcy, is wound up or goes into liquidation, or if the other party suffers any analogous proceedings under foreign law.

14.2 Either party may terminate this agreement in accordance with the provisions contained in Clause 16 (frustration of contract) and Clause 17 (force majeure).

14.3 The Consultant may terminate this agreement immediately by written notice to the Client if there is any change of control of the Client within the meaning of section 840 of the Income and Corporation Taxes Act 1988.

14.4 Any termination of this agreement (however caused) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of this agreement which is expressly or by implication intended to come into or continue in force on or after such termination, except that the Consultant shall not be liable to the Client for any loss, claims, damage, fees, liabilities, costs or expenses, whether direct, indirect, financial, economic, consequential (including without limitation loss of profit, loss of goodwill, loss of sale revenue, loss of contract and loss of opportunity) or otherwise, suffered by Client as a direct or indirect result of such termination.

14.5 Any termination of this agreement (howsoever caused) shall not affect the Client's obligation to make any and all payments that are due to the Consultant that has accrued with no right of set-off or counterclaim.

## 15. **ASSIGNMENT**

The Client shall not assign, or grant any security interest over, any of its rights or obligations under this agreement, or any document referred to in it, without the prior written consent of the Consultant.

## 16. **FRUSTRATION OF CONTRACT**

16.1 Neither party shall be liable for any delay in performing any of its obligations under the agreement if such delay is caused by circumstances beyond the reasonable control of the party so delaying and could not have been reasonably foreseen at the date of this agreement. Any party claiming that such circumstances have occurred shall give the other party full details of those circumstances in writing and, if possible, the estimated length of the delay. If the other party agrees that the circumstances fall within the provisions of this Clause 16.1, it shall confirm in writing that the first party shall, subject to an undertaking that such party will use its best endeavours to resume full performance without avoidable delay, be entitled to a reasonable extension of time under Clause 3.3 for the performance of such obligations.

16.2 If any delaying event under Clause 16.1 continues in existence for a period of 180 days or more, either party may give the other party written notice of its intention to terminate this agreement at the expiry of 30 days from the date of such notice unless, in the meantime, the delaying event has ended and Design Services under this agreement has resumed.

16.3 In the event of termination under Clause 16.2, all sums paid to the Consultant by the Client under this agreement shall be refunded to the Client, save that the Consultant shall be entitled to payment on a time-and-materials basis for all Design Services done prior to termination, provided that the Consultant takes all reasonable steps to mitigate the amount due.

**17. FORCE MAJEURE**

Neither party shall be liable for any delay in meeting, or failure to meet, its obligations under this agreement due to any cause outside its reasonable control including (without limitation) acts of God, war, riot, malicious acts of damage, fire, acts of any government authority, failure of the public electricity supply, strike, lock-out or labour dispute or apprehension thereof (whether or not the settlement of the matter is at the discretion of the party in question).

**18. NOTICES**

Any notice given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post (except in the event of a current industrial dispute affecting the postal service, when the relevant party shall serve by another means permitted in this Clause 18) to the address specified in the Fee Proposal, or to such other address as a party may from time to time notify to the other party. A notice delivered by hand is deemed to have been served when delivered. A correctly addressed notice sent by post is deemed to have been delivered 48 hours after the time of despatch. In proving the service of the notice, it shall be sufficient to prove in the case of a letter, that such letter was properly delivered or stamped, addressed and placed in the post (as the case may be).

**19. WAIVER**

19.1 A waiver of any right under this agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.

19.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

**20. SEVERANCE**

20.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**21. THIRD PARTY RIGHTS**

This agreement and the documents referred to in it, are made for the benefit of the parties to them and their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else under the Contracts (Rights of Third Parties) Act 1999.

**22. AUTHORITY**

Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

**23. ENTIRE AGREEMENT**

The parties agree that this agreement constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter of this agreement, which supersedes all Fee Proposals, oral or written, and all other communications between them relating to it.

**24. DISPUTE RESOLUTION**

24.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this Clause 24.

- 24.2 For the purpose of this Clause 24, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 24.3 Unless this agreement has already been terminated by the date of the notice of dispute, the Consultant shall in every case continue with the Design Services with all due diligence regardless of the nature of the dispute and the Client shall continue to make payments in accordance with this agreement.
- 24.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this Clause 24.4 shall be extendable by mutual agreement):
- (a) within two days, the Project Manager and the Client's representative shall meet to attempt to settle the dispute;
  - (b) if the Project Manager and the Client's representative are unable to reach a settlement within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and
  - (c) if no settlement results from the meeting specified in Clause 24.4(b), for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.
- 24.5 If no settlement is reached under the provisions of Clause 24.4:
- (a) in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and
  - (b) in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

**25. GOVERNING LAW**

This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and shall be determined by the courts of England and Wales.