



## CONSULTING SERVICES TERMS AND CONDITIONS

### 1. Interpretation

1.1 The “Supplier” means the Numerical Algorithms Group, INC. which is at 801 Warrenville Road, Suite 185, Lisle Illinois, 60532-4332 and the “Customer” is as referred to in the Order.

1.2 The definitions and rules of interpretation in this clause apply to these terms and conditions.

**Agreement:** the Contract Details and the SOW as detailed in the Order and these terms and conditions.

**Acceptance Date:** the date on which the Customer accepts the Deliverables or they are deemed to be accepted.

**Business Day:** any day from Monday to Friday inclusive, excluding United States public holidays, as may be varied by the Supplier from time to time.

**Deliverables:** any Services, software, documentation or any other products or materials the Supplier provides to the Customer under this Agreement.

**Fee:** the total cost as specified in the Order, payable by the Customer to the Supplier under Clause 3.

**Intellectual Property Rights:** any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database right, know-how, confidential information or process, any application for any of the above and any other intellectual property right recognized in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such rights.

**Order:** the order form setting out the Consulting Services and Project to be provided by the Supplier to the Customer, as signed by both parties.

**Person Day:** a period of up to 8 hours in any 24-hour period on a Business Day.

**Project:** the project described in the Order.

**Services:** activities as set out in the SOW or as otherwise agreed in writing between both parties.

**SOW:** the Schedule of Work as specified in the Order.

1.3 In this Agreement, the headings do not affect its interpretation, words in the singular include the plural and the opposite applies, a reference to one gender includes all other genders, words in the singular include the plural and the opposite applies.

### 2. Services

2.1 The Customer engages the Supplier to provide the Services from the start date as specified in the Order.

2.2 Despite anything else in this Agreement, the Supplier will not be obliged to do anything which, in the Supplier’s reasonable opinion, may infringe the Intellectual Property Rights of any third party.

2.3 Both parties will use reasonable endeavours to carry out their respective obligations and tasks so as to allow the other a reasonable time to carry out its obligations and tasks.

2.4 If either party becomes aware of the possibility of any delay or slippage, they will notify the other as soon as practicable.

2.5 The terms of this Agreement shall apply to the Project and any Services to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by custom or practice or course of dealing.

### **3. Fees**

3.1 The Customer will pay the Supplier the Fee in accordance with the Order, without any set-off, counter-claim or deduction. Each of the Supplier invoices are due and payable within 30 days of the invoice date.

3.2 All amounts payable under these terms and conditions shall be exclusive of relevant local sales tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.

3.3 If the Customer fails to make payment due to the Supplier under this agreement by the due date for payment, then, without prejudice to our other rights and remedies, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the United States federal funds rate in force from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer will pay that interest together with the overdue amount to the Supplier on demand. The Supplier reserves the right to suspend the provision of the Services in the event of non-payment.

3.4 The Customer will also pay the Supplier for travelling time spent by the Suppliers employees or consultants in connection with the Services as set out in the SOW or as otherwise agreed in writing between both parties.

3.5 The Customer will reimburse the Supplier for all travel, subsistence and other expenses incurred by the Supplier's employees or consultants in connection with the Services as set out in the SOW or as otherwise agreed in writing between both parties.

3.6 The Supplier is not obliged to carry out any services except as specifically set out in the SOW, but if the Supplier does carry out any additional work because of any act, omission or delay on the Customer's part, the Customer will pay the Supplier for that work at the Supplier's then standard rates, and the terms and conditions of this Agreement will apply to that work.

3.7 The Supplier reserves the right to increase the Supplier's standard fee rates not more frequently than every six months, on giving the Customer not less than one month's prior written notice.

### **4. Testing and Acceptance**

4.1 The Supplier will give the Customer at least seven days' advance notice of the date on which the Supplier intends to test the Deliverables. The Customer may attend those tests.

4.2 The Supplier will test the Deliverables using the Acceptance Criteria included in the SOW. The Customer will provide the Supplier with all test data and facilities (if any) included in the SOW or which the Supplier reasonably requires to carry out the tests or if the Customer is to test ("Customer testing") the Deliverables using the Acceptance Criteria included in the SOW, the Customer must confirm acceptance or notify the Supplier of failure within a testing period of 30 consecutive days from the date the Supplier made the Deliverables available to the Customer for testing

4.3 Acceptance will take place when the Deliverables pass the tests or, in the case of Customer testing that the testing period has passed with no communication from the Customer to the Supplier to the effect that the Deliverables have failed the tests, or when the Customer begins to use them in a live or production environment, that is, if the Customer uses them for any purpose except testing or evaluation, the Customer will be deemed to have accepted the Deliverables.

- 4.4 If any Deliverable fails to pass the tests, the Customer will allow the Supplier a reasonable opportunity to correct errors and deficiencies and to carry out repeat tests. This process will be repeated as often as is necessary until the Supplier confirms to the Customer that the Deliverables have passed the Supplier's tests.

## 5. Warranties

- 5.1 The Supplier will investigate any error in any Deliverable or any failure on the Supplier's part to take reasonable skill and care in the performance of the Services that the Customer reports to the Supplier, in writing, within the three months immediately following the Acceptance Date. The Supplier will provide avoidance or remedial information, or re-perform the Services where necessary.

The three-month period referred to above will be extended to the period of the Extended Warranty shown in the SOW if within one month after the Acceptance Date, the Customer pays the Extended Warranty Fee shown in the Order.

- 5.2 Because of the nature of software, the Supplier gives no representation or warranty of uninterrupted or error-free running, or that all errors will or can be rectified.
- 5.3 Because of the uncertainty of future events the Supplier does not warrant that Supplier forecasts, projections, advice or recommendations will be achievable. All information which the Supplier supplies is given in good faith, but the Supplier does not warrant the accuracy or completeness of any information obtained from, or based on information obtained from, the Customer or any third party. It is not within the scope of the Supplier's obligations to enquire as to, or to verify, the accuracy or completeness of that information.
- 5.4 The express warranties and undertakings given by the Supplier in this Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent the law allows.

## 6. Proprietary Rights

- 6.1 Where the Services involve any enhancement or modification to the Supplier's proprietary software or the creation of any work based on the Supplier's proprietary software:
- 6.1.1 the Intellectual Property Rights in the Deliverables and in all software, documentation and other materials prepared in the course of rendering the Services or relating to the Deliverables are, as between both parties, reserved to the Supplier. The Supplier may grant licences to use them to third parties. If any of those Intellectual Property Rights vests in the Customer or in the Customer's employees or contractors the Customer will, on the Suppliers request and in consideration of the Suppliers payment of \$1.00, assign those rights, or procure the assignment of those rights, to the Supplier;
- 6.1.2 the Customer will give the Supplier any assistance they may reasonably require to enable the Supplier to obtain, defend and enforce the Intellectual Property Rights in the Deliverables and in all software, documentation and other materials reserved to the Supplier in Clause 6.1.1 above; and
- 6.1.3 in return for the payment of the Fee, the Supplier will grant to the Customer a non-exclusive and non-transferable licence to use the Deliverables on the terms of the Supplier's standard software licence.
- 6.2 Where the Services involve any enhancement or modification to the Customer's proprietary software or the creation of any work based on the Customer's proprietary software:
- 6.2.1 the Intellectual Property Rights in the Deliverables will belong to the Customer;
- 6.2.2 the Supplier may re-use any concept, know-how, technique or expertise used, gained or developed in producing the Deliverables in other projects and when providing services to other customers; and

- 6.2.3 the Supplier reserves their rights to their pre-existing skills, know-how, expertise, experience and methodologies and to any software tools, underlying code or other aids the Supplier brings to the Project.
- 6.3 If the Customer makes or has anyone else make any modification to any Deliverable, the Supplier will have no further liability or responsibility for that Deliverable, will be released from any obligation to provide any service in respect of that Deliverable, and will be entitled to raise additional charges in return for any services which the Suppliers do so provide.
- 6.4 The Customer will notify the Supplier immediately if the Customer becomes aware of any unauthorized use of the Supplier's Intellectual Property Rights. The Supplier may, at any time, check that the Customer's use of the Supplier's software is in accordance with this Agreement and any licence granted to the Customer. The Supplier may enter any of the Customer's premises (and the Customer irrevocably license the Supplier, the Supplier's employees and agents to enter those premises) for that purpose.
- 6.5 Neither party will use for any purpose (except for performing this Agreement) and both parties will treat as confidential and keep secret, any information obtained about the other's business, plans, strategies, products, services, customers or technology ("Confidential Information"). This does not apply to anything that is trivial or obvious, or which is or comes into the public domain (except because of a breach of this Agreement), or which is required to be disclosed by law.
- 6.6 Neither party may, without first obtaining the other's written consent, divulge any of the other's Confidential Information to anyone except to:
  - 6.6.1 either party's employees, and then only to those employees who need to know or have access to that information in order to perform this Agreement and who accept equivalent obligations of confidentiality to those in this clause; or
  - 6.6.2 either party's auditors, or any other person or body having a right, duty or obligation to have access to that information, and then only for the purposes of that right, duty or obligation.

## **7. Duration and Termination**

- 7.1 Either party may terminate this Agreement immediately on giving written notice to the other if:
  - 7.1.1 the other commits any serious breach of this Agreement and, in the case of a breach which is not persistent and which is capable of being remedied, it has failed, within 30 days after being requested in writing, to remedy the breach; or
  - 7.1.2 the other has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a bankruptcy resolution (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court makes an order to that effect, or if it ceases or threatens to cease to carry on business.
- 7.2 This Agreement will expire at the end of the period referred to in the Order, unless otherwise agreed.
- 7.3 Either party may terminate this Agreement on giving to the other not less than three months' written notice or as set out in the Order.
- 7.4 If payment for invoices raised within the terms of this Agreement, is not made within the terms of Clause 3.1, all copies of our Confidential Information and all copies of the Deliverables in the Customer's possession or control are forfeited and shall revert to the Supplier. The Customer will erase all copies of the Deliverables and the Confidential Information from any computer system in their possession or control. The Customer will certify to the Supplier in writing that this has been done.
- 7.5 No termination or expiry of this Agreement will affect any accrued rights or liabilities of either party.

- 7.6 No refund of any charges, fees or expenses paid in advance will be made on the termination or expiry of this Agreement.
- 7.7 Clauses 1, 3, 5.2, 5.3, 5.4, 6, 7.2 to 7.7, 8, 10.2, 11, 12, 13, 14, 16, 17 and 18 will survive the termination or expiry of this Agreement or the completion of the Services and continue indefinitely.

## **8. Delays**

- 8.1 Neither party shall be in breach of this Agreement nor liable for any delay in performing, or failure to perform, any of its obligations (except an obligation to pay) under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (“force majeure”). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. The reasonableness of that extension is to be assessed not only in the context of the Project but also in the context of the parties’ other commitments. If the period of force majeure continues for six months, the party not affected may terminate this Agreement by giving 30 days’ written notice to the affected party (provided the force majeure does not end during such notice period).
- 8.2 The Supplier will endeavour to comply with any timetable or dates which the Supplier has given to the Customer for the performance of the Services and the supply of the Deliverables, but these are estimates only, and the Supplier will not be liable for any delay or failure to supply or perform in accordance with that timetable or those dates.

## **9. Representatives**

- 9.1 Both parties will each appoint a person who will act as its respective representative for the purposes of this Agreement. That representative will be authorized to take decisions on behalf of the appointor and will be responsible for providing any information which may be required by the other party to perform its obligations under this Agreement.
- 9.2 Representative details will be set out in the Order and any change in the identity or the contact details will be sent in writing to the other party within five Business Days of the change.

## **10. The Customer’s Facilities**

- 10.1 The Customer will: provide the Supplier, free of charge, with access to all information, software, equipment, materials, documentation, resources and facilities that the Supplier reasonably requests to enable them to provide the Deliverables and the Services; obtain any necessary third party consents; ensure that Customer staff, contractors and other suppliers cooperate with the Supplier and cause no delay; and where any information, decision, consent, authority, permission or agreement is required of the Customer, provide it promptly and so as not to delay the Project.
- 10.2 If the Supplier’s performance of Services is prevented or delayed by the Customer’s failure to perform any obligation in Clause 10.1 (“Customer Default”), the Supplier shall have the right to suspend the provision of the Services until the Customer Default is rectified to the Suppliers satisfaction, the Supplier shall not be liable for any cost, expense or losses sustained or incurred by the Customer and, on Supplier request, the Customer will reimburse the Supplier for any cost, expense or losses suffered or incurred by the Supplier due directly or indirectly to the Customer Default.
- 10.3 While any of the Supplier’s employees or consultants are working on the Customer’s premises, the Customer will ensure the health and safety of those people, and the Customer will indemnify the Supplier against all losses, damages and expenses incurred or suffered in connection with any claim made in respect of any injury, death or loss suffered by those employees or consultants as a result of working on the Customer’s premises.

## 11. Limits of Liability

- 11.1 Nothing in this Agreement limits or excludes the Supplier's liability for the death or injury of anyone caused by our negligence, or for any fraud or any other liability which cannot be excluded or limited by applicable law.
- 11.2 The Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (i) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits;
  - (iii) loss of anticipated savings;
  - (iv) loss of business opportunity;
  - (v) loss of sales or contracts;
  - (vi) loss of goodwill;
  - (vii) loss or corruption of data.
- 11.3 The total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equivalent to the lower of 300% the Fee payable by the Customer, in relation to the Order in which the liability arises, or \$500,000;
- 11.4 Subject to Clauses 11.1 to 11.3 inclusive above, the Supplier will indemnify the Customer against any costs or damages finally awarded against the Customer by a court of competent jurisdiction in Illinois as a result of any third party claim that the Deliverables infringe the copyright of that third party, provided that:
- 11.4.1 the Customer notifies the Supplier immediately in writing of any allegation of infringement or other claim;
  - 11.4.2 the Customer does not make any admission or in any other way prejudice the defence of any such claim;
  - 11.4.3 the Customer allows the Supplier to conduct and settle all negotiations and litigation and gives the Supplier reasonable assistance in doing so;
  - 11.4.4 the claim does not arise as a result of any modification to the Deliverables or any information, software or other materials the Customer supplied to the Supplier, or the use of the Deliverables in conjunction with anything which the Supplier has not supplied, or the design or development of any of the Deliverables in accordance with the Customer's specifications or instructions;
  - 11.4.5 the Customer has not breached the terms of this Agreement or any licence the Supplier has granted to the Customer; and
  - 11.4.6 the Supplier may modify or replace the Deliverables or refund the Fee and, on the making of that refund, the Customer will cease using the Deliverables and this Agreement will terminate.
- 11.5 The Customer acknowledges that the above exclusions and limitations on the Supplier's liability have been drawn to the Customer's attention and that the Supplier is willing to undertake greater liability provided they are able to obtain insurance to cover fully our potential liabilities to the Customer, and the Customer pays for that insurance.

This Clause 11 sets out the Supplier's entire liability in respect of any actual or alleged infringement of Intellectual Property Rights by the Deliverables.

**12. Waiver of Remedies**

No forbearance or delay by either party in enforcing its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any subsequent breach.

**13. Entire Agreement**

13.1 This Agreement supersedes all earlier agreements, arrangements and understandings between the parties in respect of its subject matter and constitutes the entire agreement between them relating to that subject matter.

13.2 No addition to or modification of this Agreement will be binding on either party unless recorded in writing and signed by a duly authorized representative of each party.

**14. Assignment and Third Party Rights**

14.1 Neither party may assign, or transfer this Agreement or any of its rights or obligations under it, whether in whole or in part, without first obtaining the other's written consent.

14.2 No third party is entitled to the benefit of this Agreement.

**15. Notices**

15.1 All notices to be given under this Agreement must be in writing and be sent to the registered office or principal place of business of the intended recipient or to any other address that the intended recipient has designated by notice given in accordance with the provisions of this Clause 15.

15.2 Any notice may be delivered personally, or by first-class postal mail, or by email, and will be deemed to have been served: if by hand, when delivered; if by first-class mail, 48 hours after mailing; and if by email, immediately on transmission, provided the sender does not receive a non-delivery message.

**16. Headings**

The headings to these Conditions are for ease of reference only, and do not affect the interpretation or construction of this Agreement.

**17. Law and Dispute Resolution**

17.1 This Agreement is governed by, and is to be construed in accordance with, the laws of Illinois. Subject to Clauses 17.2 and 17.3 below, the Illinois Courts will have exclusive jurisdiction to deal with any dispute that arises in connection with this Agreement.

17.2 If any such dispute does arise, the parties will, within 10 days after receipt of a written request from either party, meet in an effort to resolve the dispute without recourse to legal proceedings, and will appoint, on the request of either party, a neutral advisor. If considered appropriate, either party may, at any stage, seek to resolve the dispute via mediation, which shall be conducted under the then current procedures of the CPR Institute for Conflict Prevention & Resolution or any other procedure upon which the parties may agree.

Unless concluded with a written legally binding agreement, all negotiations connected with the dispute will be conducted in confidence and without prejudice to either party's rights in any future proceedings.

If the parties reach agreement on the resolution of the dispute, that agreement will be recorded in writing and, once it has been signed by their respective duly authorized representatives, it will be binding on the parties.

If the parties fail to reach agreement within 90 days after either party registered that a neutral advisor be appointed, the dispute may be referred by either party to the Illinois Courts unless, within that period, the parties agree to refer the matter to arbitration before an arbitrator whose method of appointment is agreed between them.

- 17.3 Nothing in this Agreement will restrict or prevent either of the parties from applying to any court (whether in Illinois or elsewhere) for injunctive relief.
- 17.4 If any provision of this Agreement is, for any reason, held to be unenforceable, illegal or invalid, it will not affect any other provisions; they will continue in full force and effect. This Agreement is then to be construed as if that unenforceable, illegal or invalid provision had never been contained in this Agreement. The parties will use reasonable endeavours to agree valid and enforceable terms to replace those unenforceable, illegal or invalid provisions in order to meet, so far as is possible, their original intentions.

## **18. Partnership and Staff**

- 18.1 Nothing in this Agreement evidences or implies any partnership or joint venture between the parties or the relationship between them of principal and agent.
- 18.2 Although we will endeavour to maintain the continuity of our personnel involved in providing the Services, we reserve the right to determine which of our employees and consultants performs the Services.
- 18.3 Neither party may, either during the period when we are providing the Services, or for six months afterwards, without first obtaining the other's written consent:
  - 18.3.1 solicit, or endeavour to entice away from, or discourage from being employed or engaged by the other, anyone who is or has been involved in the Project; or
  - 18.3.2 employ, engage or endeavour to employ or engage anyone who is employed or engaged by the other and is or has been involved in the Project.

This Agreement will be legally binding on the Supplier and the Customer on the date on which the Order for the relevant Services is signed by both parties.