

HYFINITY LIMITED

HYFINITY LIMITED TERMS AND CONDITIONS FOR CONSULTANCY SERVICES

1 DEFINITIONS AND INTERPRETATION

In this Agreement the following words and phrases have the following meaning:

- 1.1 **“Agreement”** means the Letter, these terms and conditions for consultancy services and any other document expressly agreed in writing by both parties as forming part of the Agreement

“Letter” means the letter attached to or included with these terms and conditions which defines Hyfinity, the Client, the Services, the Commitment, the Fees, the Term and the Designated Staff and those definitions shall apply to these terms and conditions

“Man Days” means the provision of the Services by any one of the Designated Staff to the Client from 9.00 a.m. to 5.00 p.m. on any weekday which is not a public holiday and **“Man Hour”** shall be interpreted accordingly.

- 1.2 Any reference to a statutory provision includes all re-enactments and modifications of it or the provision referred to and any regulations made under it.
- 1.3 The headings in this Agreement have been inserted for convenience only. They do not form part of this Agreement and do not affect its interpretation or construction.

2 APPOINTMENT

The Client appoints Hyfinity and Hyfinity agrees to act as a consultant to the Client through the Designated Staff to provide the Services at such locations as may be agreed between Hyfinity and the Client, including but not limited to the Client's premises.

3 HYFINITY'S DUTIES

During the Term of this Agreement Hyfinity shall (and will procure that any of the Designated Staff employed in the provision to the Client of the Services shall):

- (a) provide the Services at all times to the best of its/their knowledge, power and ability;
- (b) provide to the Client on request a written report detailing the work done in providing the Services since the previous report (or the start of this Agreement as the case may be) and otherwise answer (in writing if required) any reasonable queries the Client may have concerning the progress, nature or means of completion of the Services;
- (c) provide the Services in accordance with the time table as agreed from time to time between the parties;
- (d) it being acknowledged by the Client that the detailed performance of the Services is a matter for Hyfinity to direct its own staff upon, observe the Client's general guidance with regard to the performance of the Services including without limitation its policy on health and safety at work, security, dress, smoking, treatment of the Client's clients and suppliers and other similar instructions given by the Client's

authorised representative. The Client's authorised representative for the purposes of this Agreement will be the Client's signatory to the Letter or his/her nominees;

- (e) notify the Client so far as possible in advance of any periods over which it is or will be unable to provide the Services due to holiday, sickness or third party commitment of its Designated Staff. In the event that any of the Designated Staff shall be unavailable, Hyfinity shall use all reasonable efforts to replace such Designated Staff with personnel having equivalent skills and experience;
- (f) comply with all reasonable directions of the Client.

4 CLIENT'S OBLIGATIONS

Subject to the Client's reasonable security requirements, the Client agrees to provide Hyfinity with all information, materials and facilities as Hyfinity shall reasonably require in order to be able to undertake the Services including (but not limited to) reasonable direct or remote access and computer time on the Client's system for the purpose of Hyfinity performing the Services. The Client represents and warrants to Hyfinity that the Client has all the rights necessary to provide Hyfinity with such access and computer time on the Client's system. Notwithstanding the foregoing, Hyfinity reserves the right to ask the Client for a tape or file transfer of appropriate additional information (including but not limited to dumps or traces) in addition to the provision of remote access as contemplated by this Agreement.

5 STATUS OF THE CONSULTANT

- 5.1 Nothing in this Agreement will create the relationship of agency or partnership or employer and employee between the Client and Hyfinity and/or any of the Designated Staff.
- 5.2 Subject always to clause 3 Hyfinity and/or any of the Designated Staff will not be subject to directions from the Client as to the detailed manner in which it/they will perform its/their work.

6 PAYMENT OF FEES AND EXPENSES

- 6.1 The Consultant shall submit an invoice for the Fees, and any agreed expenses incurred, plus VAT, no later than the last day of each month during the Term of this Agreement. Hyfinity's invoices are payable by Client within 30 days from the date of invoice.
- 6.2 Subject to prior written approval of such expenses, the Client will pay to Hyfinity the amount of any reasonable expenses wholly and necessarily incurred by it or any of its Designated Staff in the provision of the Services. For the avoidance of doubt, the following expenses of Hyfinity or its staff are not reimbursable: subcontractors' costs, administration fees, office and equipment costs, and the following will be reimbursable: travel to and from the Client's premises, any additional travel required by the Client in connection with the Services and any other expenses incurred with the prior written approval of the Client

7 SALE OR RECONSTRUCTION OF THE CLIENT

The Consultant shall have no claim against the Client if its engagement is terminated by reason of the liquidation of the Client for the purpose of amalgamation or reconstruction or as part of any arrangement or amalgamation not involving liquidation provided that Hyfinity is offered an engagement with the amalgamated or reconstructed Client for a period and

on terms which, taken as a whole, are not substantially less favourable than the terms of this Agreement.

8 CONFIDENTIAL INFORMATION

8.1 During the Term of this Agreement both parties will be exposed to and be entrusted with confidential information belonging to the other.

8.2 The information referred to in clause 8.1 includes but is not limited to

- (a) information about the disclosing party's clients or customers and specific client or customer lists, staff, contractors and suppliers, whether these are actual or potential clients/customer, staff, contractors or suppliers;
- (b) information about the financial position, or future plans of the disclosing party;
- (c) information on any of the disclosing party's databases which is not publicly available;
- (d) information regarding the disclosing party's prices, discounts, business and financial marketing development or manpower plans;
- (e) information about and concerning the designs and qualifications of the products designed and manufactured by the disclosing party and those which are in the process of being designed;
- (f) all other information, whether technical, non-technical, scientific or non-scientific which the disclosing party considers might cause considerable harm were it to be available and/or used by any person, organisation or business and which is confidential in nature.

8.3 Both parties are expressly aware and agree that all of the above information, and other confidential information or trade secrets which the receiving party obtains during the Term of this Agreement is the property of the disclosing party and is hereinafter referred to as the "Confidential Information".

8.4 Each party warrants and undertakes to the other that during the Term of this Agreement and after its termination, unless expressly authorised in writing by the disclosing party, the recipient of Confidential Information shall:

- (a) keep secret and confidential the Confidential Information and will not disclose it, or permit any unauthorised disclosure, in whole or in part to any unauthorised person or third party;
- (b) use the Confidential Information only for the purpose of performing its obligations under this Agreement and will make no other use (commercial or otherwise) of the Confidential Information or any part of it;
- (c) not copy, reproduce or record (in any medium) any of the Confidential Information except to the extent reasonably necessary for the purposes of performing its obligations under this Agreement and any copies will be the property of the disclosing party; and

- (d) immediately upon the request of the disclosing party (and in any event on the expiry or termination of this Agreement (for whatever reason)) return any and all copies, reproductions or recordings (in whatever medium) of the Confidential Information except to the extent that such copy, reproduction or recording is necessary for the recipient to perform its obligations under this Agreement.
- 8.5 This clause 8 will not apply to any of the Confidential Information:
- (a) which was already in the public domain at the time it was disclosed or thereafter falls into the public domain, otherwise than through the default of Hyfinity or its staff,
 - (b) which is independently developed without reference to the Confidential Information, or
 - (c) the disclosure of which is ordered by a court of competent jurisdiction or other such competent body.
- 8.6 Each party warrants that any of its staff having access to any Confidential Information shall be subject to the same obligations of confidentiality and will enter into a suitable secrecy agreement with such staff or, insofar as this is not reasonably practicable, it shall take all reasonable steps to ensure that its staff is made aware of such obligations.
- 8.7 Each party shall use its best endeavours to prevent the disclosure of any of the Confidential Information. Where such information is disclosed, the party at fault shall notify the other as soon as is practicable after learning of that disclosure, of all the information relating to it, the nature of the disclosure and its extent. This includes, but is not limited to, information about how the disclosure occurred.

9 INTELLECTUAL PROPERTY

- 9.1 No rights of any nature in, to or over any Intellectual Property Rights owned and/or used by Hyfinity shall be conferred or deemed to be conferred on the Client by this Agreement, by the provision of the Services or by any disclosure of the Confidential Information to the Client except such rights as are expressly set out in this Agreement or as are agreed in writing with the Client from time to time.
- 9.2 Nothing in this agreement shall prevent Hyfinity or the Designated Staff at any time hereafter from using data processing techniques, software programming or development techniques, ideas and know-how which existed prior to this Agreement or was gained during the provision of the Services, in the furtherance of Hyfinity's normal business.
- 9.3 The Client agrees that any report delivered by Hyfinity to the Client during the course of providing the Services, whether oral or written, will not be quoted or referenced to other than for internal purposes, in whole or in part, without Hyfinity's prior written consent.
- 9.4 The Client shall ensure that no computer programs, materials or information supplied to, used or produced by Hyfinity or the Designated Staff on the instructions of the Client or any third party acting on behalf of the Client shall be such as to cause Hyfinity to infringe any patent, copyright, registered design, or other intellectual property right and the Client will indemnify and hold Hyfinity harmless against all claims, costs, damages and expenses which Hyfinity incurs by reason of any infringement or alleged infringement arising out of the use by Hyfinity of each computer program, materials or information for the purpose of or in connection with the performance by Hyfinity of its obligations under this Agreement provided that Hyfinity:

- (a) gives written notice to the Client of any such infringement not later than five days after becoming aware of the same,
- (b) gives to the Client the sole conduct of the defence of any claim or action in respect of an intellectual property infringement by Hyfinity and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express written instructions of the Client,
- (c) acts in accordance with the reasonable instructions of the Client at the sole cost and expense of the Client and gives to the Client such assistance as it shall reasonably require in respect of the conduct of the said defence. Hyfinity shall not be entitled to recover any costs and expenses (including legal costs) incurred in defending any claim unless such costs and expenses have been expressly authorised in advance by the Client in writing.

10 WARRANTIES

- 10.1 The Client warrants that all rights and title to any software programs, materials or information provided to Hyfinity under this Agreement are vested in the Client and/or the Client has all necessary rights to authorise Hyfinity to access, use or modify such software programs, materials or information as part of Hyfinity's provision of the Services.
- 10.2 Hyfinity warrants that it will provide the Services with reasonable care and skill using suitably qualified Designated Staff.
- 10.3 The parties each expressly agree that the warranties and undertakings given in this Agreement are the only warranties and undertakings given by each of them to the other and that all other conditions, terms, undertakings and warranties express or implied, statutory or otherwise (including but not limited to those relating to quality, performance, suitability and fitness for purpose) are hereby excluded. Nothing in this Agreement shall exclude liability for any fraudulent misrepresentations made by either party to the other.

11 LIMITATION OF LIABILITY

- 11.1 Neither party excludes liability to the other for death or personal injury arising from the negligence of its employees, agents or subcontractors.
- 11.2 Subject to 11.1 neither party shall be liable to the other in any event for any type of special, indirect, economic or consequential loss or damage (including but not limited to loss of profits, revenue, goodwill, anticipated savings, data or contracts) suffered by the other party including claims brought by a third party, even if such loss was reasonably foreseeable or the defaulting party had been advised of the possibility of the other party incurring the same.
- 11.3 Subject to 11.1 and 11.2, each party's aggregate liability to the other under or in connection with this Agreement (whether for breach of contract, negligence or otherwise) shall be limited to the total amount of the Fees payable under this Agreement.

11.4 The parties acknowledge that

- (a) this Agreement has been open to negotiation and represents the outcome of such negotiation (whether or not any change has been made to these terms and conditions during the course of such negotiation),
- (b) the terms and conditions of this Agreement are fair and reasonable,
- (c) some limitation of liability such as contained in this Agreement is to be expected, and
- (d) the limitation of liability contained in this clause is fair and reasonable in the light of the Fees payable hereunder and the nature of the Services to be provided.

12 NON SOLICITATION AND POST TERMINATION RESTRICTIONS

The Client agrees that it shall not, whether by itself or by any of its staff or subcontractors, and whether directly or indirectly during the period of 6 months following the date on which the Agreement is terminated or expires, persuade or attempt to persuade any employee of Hyfinity engaged or appointed by Hyfinity during the 6 months immediately prior to the termination of this Agreement in any capacity to terminate their employment with Hyfinity, whether or not that employee would be in breach of his/her own contract of employment so doing.

13 TERMINATION

13.1 This Agreement shall terminate upon expiry of the Term or earlier termination in accordance with this clause 13.

13.2 Either party shall be entitled to terminate this Agreement immediately without notice in writing if the other party

- (a) commits a substantial breach of any of its obligations under this Agreement and (if that breach is capable of remedy) fails to remedy it within thirty (30) days of receiving written notice of the breach
- (b) changes its ownership, through sale of its shares or by any other means, so that control of that party is in the hands of others than those in control at the Commencement Date;
- (c) the Client is on reasonable grounds dissatisfied with the level of technical skill and/or job performance of any Designated Staff used in the provision of the Services unless Hyfinity can forthwith replace that member of staff with another to the reasonable satisfaction of the Client;
- (d) the other party is insolvent or unable to pay its debts within the meaning of the following:
 - (i) if a receiving order is made against it or if an order is made or a resolution is passed for the winding up of the other party; or
 - (ii) if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party; or

- (iii) if a receiver or administrator is appointed of any of the other party's assets or undertakings; or
- (iv) if circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding up order; or
- (v) if the other party takes or suffers any similar or analogous action in consequence of debt.

13.3 Unless otherwise agreed with the Client, upon termination of this Agreement (for whatever reason) Hyfinity shall, and will procure that its Designated Staff shall, deliver up to the Client all documents, records, papers or other property belonging to the Client which may be in its/their possession or under its/their control. No copies, notes or extracts in any form will be retained by Hyfinity or any of its staff or subcontractors.

14 GENERAL

14.1 This Agreement cancels and is in substitution for all previous letters of engagement, agreements and arrangements (whether written or oral) for Consultancy Services, save for any Confidentiality Agreement which shall remain in full force and effect, between the Client and Hyfinity all of which will be deemed to have been terminated by mutual consent.

14.2 Each party acknowledges that this Agreement and the conditions which form part of it constitute the entire terms and conditions between the parties and that it does not rely upon any oral or written representation made to it by the other or its staff or subcontractors and that it has made its own independent investigations into all matters relevant to it.

14.3 No variation of this Agreement shall be effective unless made in writing signed by or on behalf of each of the parties to this Agreement and the consent of any person who is not a party to this Agreement shall not be required for any such variation.

14.4 Any notice to be served on either of the parties by the other will be delivered personally or sent by pre-paid first class post to the address of the relevant party shown at the head of this Agreement or by facsimile transmission or e-mail. Any notice served by post will be deemed to have been served 48 hours after it was posted. Any notice served by hand, by facsimile transmission or e-mail will be deemed to have been served immediately upon receipt by the party to whom it is sent.

14.5 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement will not be a waiver of them or of the right to subsequently enforce all terms and conditions of this Agreement.

14.6 This Agreement is enforceable by the original parties to it and (subject to the terms set out in this agreement) by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 (or any successor legislation) are expressly excluded.

14.7 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales and the parties to this Agreement submit to the exclusive jurisdiction of the English Courts in relation to any claim, dispute or matter arising out of or relating to this Agreement.



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 Blythe Valley Park, Solihull
 West Midlands B90 8AJ
 United Kingdom

Email: admin@hyfinity.com
 Web: www.hyfinity.com

Client:
 YOU or the Entity on behalf of which you are acting

Date: Date of Purchase

Dear Client

Re: Consultancy Services – Statement of Work

I write to confirm the basis upon which Hyfinity Limited (“Hyfinity”) will provide time and materials based consultancy services to YOU (“Client”).

The Services:	Hyfinity will provide the Consultancy Services as defined during purchase. The Services to be delivered remotely from Hyfinity's UK offices.
The Work Product:	Hyfinity and the Client will have rights to use the knowledge prepared by Hyfinity.
The Hyfinity IP:	N/A
The Commitment:	The Service Delivery will consist of the duration as defined during purchase and altered or extended via agreement thereafter.
The Fees:	The costs will be as defined during purchase, with any additional effort being negotiated and agreed at the prevailing of such future commitments. Invoicing is on a time and materials basis, billable at the end of each calendar month. Payment terms are 30 days from the date of invoice. All prices are exclusive of Sales Taxes and agreed expenses.
The Term:	Service Delivery Period: As defined during time of purchase or agreed thereafter.
The Designated Staff	As determined by Hyfinity.
Contact Information for Notices	Hyfinity: admin@hyfinity.com Client: Email supplied at time of purchase or agreed change thereafter

The Services will be provided by Hyfinity on the above basis and subject to Hyfinity’s “Terms and Conditions” for Consultancy Services. These Terms and Conditions may form part of this same document, as a separate attachment or made available on Hyfinity’s website. By purchasing Consultancy Services from Hyfinity, YOU agree to this arrangement, including the Terms and Conditions.

Yours faithfully

For and on behalf of *Hyfinity Limited*