

Consultancy Terms and Conditions – October 2016

1. **Agreement:** The parties agree that Customer shall purchase from TES and TES shall provide to Customer the Services detailed in the Proposal and subject to the terms of the Proposal and these terms and conditions ("**Terms & Conditions**"), hereinafter collectively called the "**Agreement**".
2. **Term:**
 - 2.1 The Agreement shall remain valid from date of final signature hereto until completion of the Services and the obligations of both TES and Customer under the Agreement, unless terminated in accordance with clause 2.2 or 2.3. Any continuing obligations of the Parties under the Agreement shall survive termination.
 - 2.2 TES may terminate this by Agreement by giving no less than 14 calendar days written notice to Customer.
 - 2.3 Either party may immediately terminate the Agreement in the event of; (i) a material default by the other party, or other breach of the Agreement which is not cured within a 30 calendar day of notification of the breach; or (ii) if a party; files a petition for bankruptcy/insolvency; or makes a deed of assignment/arrangement for the benefit of its creditors generally; or passes a resolution for winding up other than in the course of an amalgamation or reconstruction; or has an order for winding up made by any competent court; has an encumbrancer take possession of/a receiver/administrative receiver appointed over the whole/substantial part of its undertaking/asset/rights/ revenues or a distress/execution/sequestration or other process is effected and is not discharged/dissolved within fourteen (14) calendar days; or suspends/is unable/admits its inability to pay its debts as they fall due; or ceases to carry on its business or a substantial part.
 - 2.4 Upon termination TES shall invoice Customer a proportion of the Fee, reflective of the Services delivered at the date of termination for payment within 5 English Business days. All other outstanding payments due from Customer shall be paid immediately
 - 2.5 Any continuing obligations of the parties under the Agreement shall survive termination.
3. **Duties & Responsibilities:**
 - 3.1 TES shall perform its activities by order of Customer only. All communications on services provided under the Agreement shall be exclusively between TES and Customer or any Customer designated agent unless agreed in advance in writing between TES and Customer. In performing the services, TES shall observe and act on instructions and orders duly given by Customer, which will, however, not release TES of its own responsibilities hereunder or under any order.
 - 3.2 TES shall be responsible for complying with any applicable laws and regulations to it or its activities and for acquiring or maintaining during the performance of the instructed activities any licenses, approvals, certificates or exemptions necessary therefore.
4. **Fees, Costs & Payment Terms:**
 - 4.1 Fees and payment terms for the Services are detailed in the invoice. Unless payment in advance is required, all invoices shall be paid within thirty (30) calendar days of the invoice being received by Customer (unless payment is required in advance of service commencement). All payments shall be made in full and cleared funds, without any deduction or withholding.
 - 4.2 Interim Invoices: Where payment is not required in advance and where Services may run over several months, TES reserve the right to issue interim invoices (including travel and living costs) on a monthly basis, reflecting either the actual time incurred or completion level of the services.
 - 4.3 Travel & Living Costs: Where applicable Customer shall reimburse TES, at cost price incurred, for all travel and living costs incurred by TES in providing and carry out the Services. Such costs shall be in addition to the Fees detailed in the Proposal. For information:
 - (i) Flights of less than four (4) hours duration shall be booked as economy fares.
 - (ii) Flights of greater than four (4) hours duration shall be booked as business class fares.
 - (iii) Hotels shall be booked in the "middle range" e.g. Marriot Courtyard, or equivalent utilising TES' travel agent preferential rates.
 - (iv) Expenses incurred such as food, parking, taxi etc., shall be billed at cost incurred.
 - (v) For UK travel where required, mileage will be charged at a rate of £0.45 per mile or currency equivalent as may be revised every year.

Note: Receipts will not be routinely provided

 - 4.4 Payment Reconciliation: At completion of the Services TES will provide final details of travel and living costs. Where an overpayment has been made by Customer TES shall promptly reconcile any overpaid amounts to such account as requested by Customer. Where an underpayment had been made by Customer, Customer shall make payment within 5 English business days of notification of the underpayment.
 - 4.5 Suspension of Services: In the event of non-payment or late payment, TES shall be entitled to suspend all Services being performed under the Agreement until such time as all overdue payments are received.
 - 4.6 Postage and Freight Charges: Where TES are required to post/freight documents and parcels in support of the services undertaken, charges for such postage/freight will be recharged to Customer at cost incurred.
 - 4.7 Mobile Phone Charges: On an extraordinary basis, TES will recharge mobile phone costs incurred in support of the services undertaken. The charges will only be invoiced to Customer where they are considered extensive and beyond normal expectations, and only following agreement with Customer.
 - 4.8 All payments due to TES shall be made by wire transfer to the account details on submitted invoices. Late payment shall incur annual interest at a rate of 8%.
5. **Confidentiality:**

TES and Customer warrant that the information and content of the Agreement, any ancillary /related documents, all information which is secret or otherwise not publically available (in entirety or part) including financial, commercial, marketing or technical information, know-how, trade secret or business methods, personal data in all cases whether disclosed orally or in writing is confidential and the information shared between the two parties prior to the execution of the Agreement and throughout the term of the Agreement, shall be treated as confidential and not be disclosed to any third parties, be it that any data generated or produced by TES by order of Customer shall vest no restriction whatsoever in Customer unless specifically agreed otherwise by both parties prior to the acceptance of Customer's order. Neither party shall disclose the Agreement or its terms to any person other than: (a) to such party's board of directors, employees, auditors or professional legal, tax and technical advisers (in which case the disclosing party shall cause each such person to abide by the terms of this clause 5); or (b) in the case of TES to its associated companies; or (c) to the extent necessary in the enforcement of a party's rights; or (d) to any party's permitted assigns; or (e) or as may be required by any applicable laws or regulations. This confidentiality clause shall survive the expiration or termination of the Agreement for a period of 1 year
6. **TES Limited Liability:**
 - 6.1 Nothing in the Agreement excludes or limits TES' liability for (a) death or personal injury caused by TES' negligence; (b) fraud or fraudulent misrepresentation; or (c) any liability which cannot legally be excluded or limited.
 - 6.2 Subject to clause 6.1, TES is not liable, whether in contract, tort (including negligent or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement for loss of profit, revenue, business or anticipated savings, in each case whether direct or indirect, or for any special, indirect or consequential loss or damage of any nature whatsoever, howsoever arising.
 - 6.3 Subject to clause 6.2, TES total liability in contract, tort (including Negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Agreement shall not exceed US\$100,000.
- 6.4 In addition to any other remedy available to TES, Customer shall indemnify, defend and hold harmless TES and its respective directors, officers and employees in full and on demand, with no duty to mitigate their losses, from and against any and all, direct or indirect liabilities, claims, demands, damages, losses or expenses (including legal or other professional advisors fees and disbursements) interest and penalties incurred by them howsoever arising whether wholly or in part resulting directly or indirectly from the provision or the performance of the instructed services, whether or not such losses were foreseeable at the date of the Agreement.
- 6.5 Each provision of this clause is to be construed as a separate limitation (applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable in any circumstances) and shall remain in force notwithstanding termination of the Agreement.
7. **Governing Law:** The Agreement shall be governed and construed in accordance with English law and shall be deemed to have been made in England. Each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the Agreement.
8. **Force Majeure:**
 - 8.1 TES shall not be liable for nor deemed to be in default on account of any delay or for the consequences of any delay in performing any of its obligations under the Agreement or any order by Customer if such delay is due to any cause whatsoever beyond its reasonable control, including but not limited to, acts of God or the public enemy; civil war; insurrection or riots; fires; floods; explosions; earthquakes; restrictions or strikes; government legislation, acts, orders or regulations; inability or failure of suppliers to deliver (to the extent caused by reasons similar as those mentioned in this provision); labour dispute, work stoppage; or for any other cause to the extent that it is beyond TES' reasonable commercial efforts to control.
 - 8.2 If a delay in delivery is due to any reason mentioned under clause 8.1 and continues or threatens to continue for a term which Customer (at its sole discretion) determines to be unreasonable, then Customer will have the right to cancel the Services subject to payment for the proportion of Services then completed by TES. TES shall deliver or transfer to Customer any results, proceeds or products generated up until the date of cancellation under this clause.
9. **Notices:** All notices and other communications required or permitted under the Agreement shall be in; (a) writing (sent by any generally available commercial delivery carrier providing tracking service, by first class mail, return receipt requested, postage prepaid, to the applicable address set out in the Proposal, or to any other address for notices that either party may provide to the other, all properly delivered notices shall be effective upon delivery or, if delivery is refused, upon the date that delivery is refused); or, (b) email to the address to set out in the Proposal (and shall be considered delivered upon the senders receipt of a "delivery receipt")
10. **Sub-Contracting:** With Customer's consent, TES may retain a third party sub-contractor or supplier in the performance of its obligations hereunder or transfer or assign any of its obligations to any such third parties. TES shall under all circumstances remain responsible and liable towards Customer for the due performance of its obligations.
11. **Independent Contractor:** The Agreement is not to be construed as a joint venture, incorporation or business association. Each party shall remain an independent party and does not have the right to act in the name or on behalf of the other party.
12. **Entire Agreement & Amendments:**
 - 12.1 The Agreement and any amendment contains the entire agreement between the parties in relation to the subject matter and supersede any prior arrangement, understanding written or oral agreements between the parties in relation to such subject matter. The parties acknowledge that the Agreement has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in the Agreement. Each party agreed that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waive any right it may have to any claim, rights or remedies including any right to rescind the Agreement which might otherwise have had in relation to them. All warranties, conditions, terms and representations not set out in the Agreement whether implied by state or otherwise are excluded to the extent permitted by law. Nothing in this clause 12.1 will exclude any liability in respect of misrepresentations made fraudulently.
 - 12.2 No amendment or modification of the Agreement will be valid or binding unless in a written instrument signed by both TES and Customer. The Agreement may be executed in one or more counterparts, each of which shall be considered an original but all of which together constitute one and the same instrument. The Agreement cannot be amended or altered by electronic mail.
13. **Intended Use of Services:** Customer shall not use or sell, transfer, export, or re-export or participate in any export transaction of the services provided in accordance with the Agreement directly, or indirectly, in a manner that breaches any US or EU imposed trade restrictions and sanctions, including those imposed by or against Customer or the ultimate end user/beneficiary of the services, or Customer's owner or ultimate or end user/beneficiary of the services owners state of incorporation.
14. **General: Partial Invalidity / Waiver of Rights / Further Assurances / Third Parties**
 - 14.1 Performance; Time shall be of the essence as regards all payments and performance by Customer of its obligations under the Agreement.
 - 14.2 Partial Invalidity; If any provision of the Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired
 - 14.3 Conflict; In the event of conflict between these Terms and Conditions and the Proposal, the terms of the Proposal shall prevail.
 - 14.4 Waiver of Rights; All rights and remedies of either party in respect of the Agreement shall not be diminished, waived or extinguished by the granting of any indulgent, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such right or remedies. Any waiver of any breach of the Agreement shall be in writing. The waiver by either party of any breach of the Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any provision.
 - 14.5 Further Assurances; Each party agrees from time to time to do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by any other party to establish, maintain and protect the respective rights and remedies of the parties and to carry out the intent and purpose of the Agreement.
 - 14.6 Third Parties; A party who is not a party to the Agreement has no right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Agreement.