

## TERMS OF ENGAGEMENT - 1.0 DEFINITIONS

1.1 The following definitions shall apply in these terms, unless the context otherwise requires: CADA means CADA Design Group Limited, trading as CADA Design Group, whose registered offices are at Suite 4, 9 Bell Yard Mews, London, SE1 3UY.

**Design Services** means the services specified in the Letter of Engagement being any or all of the following services; namely design of premises, graphics design, interior design, digital media, consultancy services, corporate identity creation and market research and such other services, (if any) as are described in the letter of engagement.

**Design Stage** is the time when CADA has completed the production of the initial plans and elevations in accordance with the design concept for the premises.

**Documentation Stage** is the time when CADA has produced the documentation to be issued for tendering or negotiation for contracts to carry out the works and/or supply of goods required to implement CADA's designs for premises.

**Goods** means any products or materials created by CADA as part of the Design Services which are to be delivered to the client pursuant to the Design Services.

**Effective Completion** means that stage at which works to carry in to effect CADA's designs for premises are completed and free from known substantial omissions and such Effective Completion shall be certified by CADA for the purposes hereof.

**Gross Contract Value** means the estimated cost, as certified by CADA from time to time, of the works to be carried out and the goods to be supplied to implement CADA's designs for premises. The Gross Contract value shall include all amounts yet to be included in the final accounts of the contractors and suppliers which sums will be estimated by CADA.

**Interim Contract Value** means the estimated cost, as certified by from time to time, of the works carried out and the goods to be supplied to implement CADA's designs for the premises. CADA will make or review such estimates at each stage by reference to the Client's requirements as to the extent of the project and on the basis of the progress of the project and on the basis of the progress of the project at each stage.

**Presentation Stage** means the date on which CADA presents or is ready to present to the Client outline designs for premises for the project without detailed drawings, plans or further documents.

1.2 The following provisions shall apply for the purposes of ascertaining the interim contract value and the gross contract value:

1.2.1 No reduction shall be made for any counterclaim, set off or retention in respect of accounts of contractors or suppliers for any cause.

1.2.2 There shall be included the estimated open market cost of any goods or services provided to the client at less than market value. Such estimated open market cost shall be certified by CADA in writing for this purpose.

1.2.3 If the client does not implement the project (or any part thereof) then the Interim Contract Value from time to time and the gross contract value shall be increased to the estimated open market cost of implementing the whole project. Such estimated open market cost shall be certified by CADA in writing for this purpose.

## 2.0 DESIGNER'S UNDERTAKING

2.1 CADA will provide the design services to the client subject to these Terms of Engagement using such reasonable skill and care as is expected of a competent interior designer in undertaking the design services and other obligations hereunder.

## 3.0 DESIGNER'S SERVICES - PREMISES

3.1 In accordance with information and instructions given by the client, CADA will produce a design for the client's premises. Such services will be in accordance with the Letter of Engagement, and will include such of the following as are, in the opinion of CADA required for the project.

3.1.1 Taking and evaluating the client's instructions and requirements.

3.1.2 Formulating an initial design concept.

3.1.3 Development of the design including, but not limited to, creation of detailed drawings, layouts and finishes, the selection of furniture, furnishings, fixtures, and materials, and attending at design review meetings and, when necessary or required by the client, the production of design prototypes.

## 4.0 DESIGN IMPLEMENTATION

4.1 CADA will advise on the implementation of the designs. Design implementation will include such of the following as are, in the opinion of CADA, required by the project:

4.1.1 Giving advice on the selection and engagement of contractors and suppliers to implement the designs.

4.1.2 Making applications for any planning permissions and statutory consents.

4.1.3 Preparing documentation and detailed drawings to enable tendering or negotiation to take place to implement designs.

4.2 If CADA is required to pursue any planning appeals or make any applications involving change of use, complex planning technicalities or points of law then those services will be the subject of an additional fee under clause 13.

## 5.0 PROJECT SUPERVISION

5.1 CADA will supervise the implementation of the designs including periodic on-site inspections. CADA will monitor the performance of contractors and suppliers in the visual implementation of the designs to the extent reasonably required by the client.

5.2 CADA will implement procedures for the control of quality, cost and programme progress of contractors and suppliers within the scope of CADA's brief.

5.3 CADA will report to the client with reasonable frequency on significant aspects of the project supervision.

## 6.0 GRAPHIC DESIGNS

6.1 CADA will design the graphics and artwork required by the client in accordance with the instructions of the client. The design of graphics will (if required by the client) include advice on the implementation of the graphics designs through to a finished product. This will include the selection of, placing of orders with and supervision of such suppliers and contractors as are required to implement the graphics designs to a finished product but CADA shall not be liable for the selection or performance of such suppliers or contractors.

## 7.0 CORPORATE IDENTITY

7.1 CADA will develop a corporate identity package in accordance with the client's instructions. The corporate identity package will comprise the concepts and designs specified in the Letter of Engagement.

## 8.0 MARKET RESEARCH

8.1 The market research work will comprise the work specified in the Letter of Engagement which CADA will carry out in accordance with the instructions of the client.

8.2 CADA will provide to the client the results of the market research carried out. CADA cannot guarantee that market research accurately reflects or predicts market response and it is not possible to ensure the suitability of any sample or cross section of subjects used for such research. Interpretation of the results of market research is a matter of opinion and CADA accepts no liability for the same.

## 9.0 FEES

9.1 A design fee either on a percentage or fixed fee basis (as hereinafter defined), whichever is specified (in respect of design services for premises) in the Letter of Engagement.

9.2 A single fee for graphics design, creation of a corporate identity or market research (with further fees on the implementation of a graphics design or corporate identity package).

9.3 Time charges and charges for additional services.

9.4 Disbursements and artwork will be charged in addition to the above fees.

9.5 All fees payable for Design Services (whether on a fixed or percentage basis) shall be payable in full regardless of whether the Design Services have been fully completed or have been aborted.

9.6 Risk of damage to or loss of the Goods passes to the client upon completion of the Design Services. Notwithstanding delivery and the passing of risk in the Goods, the property in the Goods shall not pass to the client until CADA has received payment in the full of fees for the Design Services.

## 10.0 PERCENTAGE BASIS

10.1 The design fee on a percentage basis means that the percentage specified in the Letter of Engagement applied to the gross contract value. The design fee will be payable in the following percentage instalments at the following stages.

Instalment	% of design fee payable	Stage at which fee payable
First	40%	Presentation stage
Second	25%	Design stage
Third	25%	Documentation stage
Fourth	10%	Effective completion

10.2 The first, second and third instalments will be based on the interim contract value at the date of the invoice from CADA relating to such instalment. The invoice will take into account any change in the interim contract value since the date of the submission of the previous invoices. The fourth instalment is based on the gross contract value.

## 11.0 DESIGN FEE: FIXED FEE BASIS

11.1 The design fee on a fixed fee basis means the agreed fixed fee specified in the Letter of Engagement. Such design fee will be payable in the following instalments.

Instalment	% of design fee payable	Stage at which fee payable
First	40%	Presentation stage
Second	25%	Design stage
Third	25%	Documentation stage
Fourth	10%	Effective completion

## 12.0 SINGLE FEE FOR GRAPHICS, CORPORATE IDENTITY PACKAGE OR MARKET RESEARCH

12.1 CADA's fee for graphic designs, a corporate identity package or market research shall be a single fee as specified in the Letter of Engagement.

12.2 Such fee will be payable in three instalments as follows:

12.2.1 40% on the engagement of CADA for such work.

12.2.2 40% by way of interim payment on presentation of an invoice by CADA at a time to be determined by CADA at any time during the progress of the design work.

12.2.3 20% on production of work covered by such fee.

## 13.0 TIME CHARGES AND EXTRA WORK

13.1 If the project requires prototype work, graphic work or artwork, such work will be charged to the client on a time charge basis. Extra work and expense caused to CADA resulting from delay in receiving payments or instructions, delays in the project caused by the client or any third party, changes in the client's instructions, changes in the law, regulations or interpretation thereof or any other cause whatsoever beyond the control of CADA shall be charged to the client in addition to all other fees.

13.2 Any such fees or charges as are described in clause 13.1 will be charged on a time charge basis at CADA's current standard hourly rates from time to time, details of which are available on request from CADA and may be invoiced monthly.

## 14.0 DISBURSEMENTS

14.1 In addition to the agreed fees the client shall pay all expenses and disbursements incurred in providing

the design services including (but not limited to):

14.1.1 The board and subsistence of CADA's employees or consultants when they are away from CADA's offices or their home; and

14.1.2 All fares incurred in connection with the provision of the services hereunder (first class rail and business class air) and including the current standard mileage charges of CADA where its vehicles are used (details of such standard charges from time to time are available upon request); and

14.1.3 Any printing, photographs, artwork, copying, telefax, postage and other communication costs and cost of maps, documents, research materials, visual representations, prototypes and fees for obtaining or researching records; and

14.1.4 Fees paid in respect of planning or building regulations consent (or similar) and fees incurred with the client's approval with consultants (including but not limited to legal, field work, market research, or building services).

14.2 An administration charge equal to 15% of the value of any disbursements chargeable under clause 14.1 or any liability under clause 17.3 will be payable by the client in addition thereto.

## 15.0 PAYMENT OF FEES

15.1 All fees and other sums due to CADA hereunder shall be subject to Value Added Tax (where applicable) and shall be paid in sterling at CADA's offices within 14 days of the date of the invoice.

16.1 CADA shall not be liable for failure of the actual costs of implementing any designs to comply with any estimate of costs whether or not such estimate was prepared by CADA. The client is advised to employ the services of a quantity surveyor where appropriate.

16.2 CADA's aggregate liability (including liability for breach of contract, negligence, whether in tort, contract or loss of any kind) arising out of CADA's obligations under these Terms in respect of any matter (or a series of connected matters) arising out of CADA's duties hereunder shall be limited to £500,000.

16.3 CADA shall not be liable for (i) any loss (direct or indirect) of profits, goodwill or business, loss of revenue and loss of opportunity costs whether or not CADA is aware of the possibility of such loss, nor shall CADA be liable for (ii) any consequential loss or damage whatsoever and howsoever arising.

16.4 CADA shall not be responsible for any delay in performance or non-performance in whole or in part of its obligations to the client under this agreement if such delay in performance or non-performance is due to any cause beyond the control of CADA including, but not limited to, act of God, war, insurrection, riot, civil commotion, government regulation, embargo, explosion, strike, labour dispute, illness, flood, fire, tempest ("Force Majeure Event", or failure by consultants or subcontractors to honour their obligations to CADA. To the extent that CADA's expenses are increased due to the occurrence of a Force Majeure Event, CADA shall be entitled to full reimbursement from the client of such additional expenses.

16.5 The client will indemnify and keep indemnified CADA in respect of any loss, injury, damage, expense or third party claim arising from the implementation of the design services save and insofar as any such loss, injury, damage, expense or third party claim is solely and exclusively attributable to the negligence of or breach of this contract by CADA.

16.6 The client will indemnify CADA on demand against all costs and expenses (including legal expenses) incurred by CADA in connection with recovering fees and other amounts owed by the client to CADA.

16.7 Each foregoing sub-clause of this clause shall constitute a separate and severable agreement and shall survive the termination, completion or avoidance of this agreement. The provisions of this clause shall be for the benefit of CADA and every servant, agent and subcontractor of CADA.

## 17.0 CONTRACT WITH THIRD PARTIES

17.1 Without prejudice to CADA's rights to appoint persons on a sub-contract basis, CADA may with the prior approval of the client, engage consultants being architects, consulting engineers, quantity surveyors and/or other appropriate consultants in connection with the project. In effecting such engagements CADA shall notify the client that it is acting as agent for the client who shall be the employer of all such consultants. The client will hold each consultant, and not CADA, responsible for the competence and performance of the obligations of that consultant. CADA will have the authority to co-ordinate and integrate into the overall design the services provided by any such consultants. The fees of such consultants shall be paid by the client.

17.2 If CADA as agent for or for the benefit of the client signs or enters into contracts with contractors, suppliers, consultants or professional advisers, the client shall indemnify and keep indemnified CADA against all actions, claims, costs or demands by any such contractor, supplier or consultant. CADA shall not be liable for any breach of contract, negligence or breach of duty by such contractors, suppliers, consultants or professional advisers.

17.3 If CADA shall incur any liability to a contractor, supplier or consultant on behalf of or for the benefit of the client then the client shall forthwith upon demand pay to CADA the amount of such liability and the provisions of clause 14.2 shall apply thereto.

17.4 CADA shall have the right without requiring consent, to sub-contract or delegate any of its obligations under these Terms of Engagement. [Where CADA acts as agent for the client under clause 17.1 it shall do so only by agreement].

## 18.0 COPYRIGHT AND INTELLECTUAL PROPERTY

18.1 CADA shall retain the property in all the copyright and other intellectual property in the designs, specifications, plans, elevations and drawings produced by CADA ("CADA Materials") including all the work executed from the CADA Materials. No part of the CADA Materials may be reproduced without CADA's prior written consent.

18.2 Where CADA has produced other designs for the client related to the interior or exterior of a particular property, and the client having paid the design fees therefor in full, then (subject to clause 19) CADA grants to the client a personal non-exclusive non-assignable licence to use such design for that particular property.

18.3 Any other use of CADA's designs (including graphics designs, designs forming part of a corporate identity package or use of property designs outside the licence specified in sub-clause 18.2) require the prior written licence of CADA which will be subject to agreement and payment of a further fee for design implementation.

18.4 CADA does not warrant the existence of any exclusive copyright, industrial design right or similar exclusive intellectual property in the designs provided hereunder. CADA cannot warrant the client's right to use any trading name or trade or service mark proposed by CADA and the client should seek advice on the trade or service mark proposed by CADA and the client should seek advice of trademark agents before using such name or mark.

18.5 For the avoidance of doubt where CADA is involved in design or creative work for the client on terms that CADA is to be paid a fee for the future reproduction, alteration or use of such design or creative work the licence granted under clause 18.2 (or clause 18.3 where applicable) shall be conditional on all such future fees being paid.

18.6 The client acknowledges that damages may be not be an adequate remedy for breach of CADA's intellectual property rights and that CADA shall be entitled to seek injunctive relief in relation to any infringement of those rights.

## 19.0 TERMINATION

19.1 CADA may terminate this contract without prejudice to any of the rights of either party hereunder if a bankrupt petition shall be presented against the client or if the client shall become insolvent, have an administrative receiver appointed over all or part of its assets or if it shall call a meeting of its creditors with a view to entering into liquidation or have a winding-up petition presented against it or shall petition for an administration order or if the client shall fail to make payment of any sum due hereunder on the due date or otherwise be in material breach of this agreement.

19.2 Upon such termination:

19.2.1 CADA shall not be required to provide any further design services, and

19.2.2 Any licence granted to the client to use any design or other work or copyright work of CADA shall forthwith terminate, and

19.2.3 CADA shall be entitled immediately to payment in full for the Design Services.

## 20.0 RESTRICTION RELATING TO CADA'S STAFF

20.1 The client shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the latest to occur of (a) the completion of the Design Services (b) the last date of supply of the Design Services and (c) termination of this agreement, do any of the following things and the client shall ensure that no Client Group Company does any of the following things, namely:

20.1.1 solicit or entice away from CADA or employ or attempt to employ or engage as a consultant or sub-contractor any person who is, or has been, engaged as an employee, consultant or subcontractor of CADA who was engaged in the provision of the Design Services;

20.1.2 encourage any employee, consultant or subcontractor of CADA who was engaged in the provision of the Design Services to terminate their engagement with CADA or otherwise to seek to vary the terms of their employment or contract with CADA.

20.2 Each sub clause of clause 20.1 shall be a separate and severable obligation on the part of the client.

Whilst each of the above restrictions are considered by the parties to be reasonable if any of such restrictions shall be judged to be void as unreasonable for the protection of CADA's legitimate interests but would be valid if the period of the restriction were reduced or some other term of the restriction were modified then the restrictions contained in clause 20.1 shall be deemed to apply with such modification(s) as may be necessary to make them valid. This clause 20.1 shall continue to apply notwithstanding termination of this Agreement howsoever arising.

20.3 For the purposes of this clause 20 Client Group Company means any company which for the time being is a company having an ordinary share capital (as defined in Section 832 of the Income and Corporation Taxes Act 1988) of which not less than 25 per cent is owned directly or indirectly by the client or its holding company applying the provisions of Section 838 of the Income and Corporation Taxes Act 1988 in the determination of ownership.

## 21.0 MISCELLANEOUS

21.1 This agreement represents the entire agreement between the parties hereto and any representations made by CADA are expressly excluded unless specifically incorporated into this agreement.

21.2 No variation to these terms or the Letter of Engagement shall be binding upon CADA unless contained in a written document signed by a director of CADA.

21.3 In the case of discrepancy between these terms of engagement and the letter of engagement, the latter shall prevail.

21.4 CADA may exhibit a notice board at any premises where designs are being implemented. CADA may take and make full use of photographs of such implemented designs.

21.5 The client will at its own cost effect and maintain such insurance as may be required in respect of implementation of the design services.

21.6 CADA shall be authorised in the case of urgency or minor alterations to make variations in the plans, designs, specifications or other documents without the prior authority of the client. CADA shall inform the client of such variations as soon as practicable thereafter.

21.7 The parties do not intend that any term of this agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party hereto.

## 22.0 CONSTRUCTION AND THE LAW

22.1 In construing this agreement, all clause headings shall be ignored.

22.2 If the client consists of more than one individual, corporation, or other entity then their obligations shall be joint and several.

22.3 No failure by either party to exercise its rights hereunder shall be a waiver of such rights.

22.4 Any certificate issued by CADA under these terms of engagement or the Letter of Engagement shall be final and binding as between CADA and the client, in the absence of any manifest error.

22.5 This agreement shall be governed by the laws of England and Wales and any dispute shall be determined by the courts of England and Wales and shall be tried in London.