

PROFESSIONAL SERVICES AGREEMENT

ENGLAND & LYLE LIMITED

BACKGROUND

England & Lyle Ltd has agreed to provide consultancy services to the Client 'under the terms and conditions of this Agreement.

1. CONSULTANCY SERVICES

- 1.1 All professional services provided by England & Lyle Ltd to the Client shall be governed by the terms of this Agreement. At the commencement of the services England & Lyle Ltd may submit to the Client a statement of work and/ or other similar document describing the services to be provided by England & Lyle Ltd (such documents being collectively referred to as the 'Initial Instruction') which shall specify the services to be performed and the fees payable. All Initial Instructions and any variation thereto, including any additional instructions will be subject to the terms set out herein. The Client shall notify a Director of England & Lyle Ltd immediately if the Client does not agree with the contents of the Initial Instruction. Upon the completion of the services described on the applicable Initial Instruction, the Client shall sign and return one copy of the Initial Instruction to England & Lyle Ltd. The parties may, from time to time, mutually agree upon and execute new Initial Instructions. Any changes in the scope of services to be provided hereunder shall be set forth in the Initial Instruction, which shall reflect the changed services, schedule and fees.
- 1.2 All daily rates when applicable are based on a seven and a half hour day, inclusive of travel time. All hourly rates are exclusive of travel time, unless otherwise agreed. Any services requested that are in excess of a seven and a half hour day shall be charged at the prorated hourly rate, as applicable. Scheduled service dates shall be mutually agreed upon and subject to availability of (England & Lyle Ltd' personnel or England & Lyle Ltd' authorised representative), except as may be otherwise agreed to in writing by England & Lyle Ltd Director, time shall not be of the essence in the performance of any professional services, but England & Lyle Ltd shall use all reasonable endeavours to complete services within the estimated time frames.

2. PAYMENT

- 2.1 The Client shall pay to England & Lyle Ltd the fees set forth in the applicable Initial Instruction or as may be otherwise agreed between the parties. England & Lyle Ltd will invoice the Client monthly in arrears for services rendered in the previous month and for reasonable out-of-pocket expenses incurred in providing those services. Payment will be due within 30 days of the invoice.
- 2.2 It is declared that for the purposes of payment of fees time shall be of the essence. If payment is not made on time England & Lyle Ltd reserve the right to immediately cease carrying on any further work for the Client.
- 2.3 Invoiced amounts shall be due and payable upon presentation. The Client may be required pay interest on overdue amounts at a rate equal to eight percent (8%). In the event that the Client's procedures require that an invoice be submitted against a purchase order to payment, England & Lyle Ltd shall be responsible for issuing such purchase order before the services are rendered.
- 2.4 Under the Late Payment of Commercial Debts Regulations 2002 (SI 2002/1674) once a party becomes entitled to statutory interest, they can also claim a fixed sum to the following maxima:
- For a debt less than £1,000, the sum of £40.
 - For a debt of £1,000 or more, but less than £10,000, the sum of £70.
 - For a debt of £10,000 or more, the sum of £100.
 - These provisions are incorporated into the contract.
- 2.5 England & Lyle Ltd reserved the right to apply such charges.

3. CLIENT OBLIGATION

- 3.1 To enable England & Lyle Ltd to perform its obligations hereunder the Client shall:
- (a) Co-operate with England & Lyle Ltd;

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- (b) Provide England & Lyle Ltd promptly with all information and documentation reasonably required by England & Lyle Ltd;
 - (c) Comply with such other requirements as may be set out in any Initial Instruction or otherwise agreed between the parties.
 - (d) All requested payments promptly
- 3.2 The Client shall be liable to compensate England & Lyle Ltd for any additional expense incurred by England & Lyle Ltd through the Client's failure to follow England & Lyle Ltd' reasonable instructions, or through the Client's failure to comply with clause 3.1.
- 3.3 Notwithstanding the generality of the foregoing, in the event that the Client unlawfully terminates/ cancels the agreed-to services, the Client shall be required to pay to England & Lyle Ltd as agreed damages and not as a penalty the full amount of any third party costs to which England & Lyle Ltd has committed (including the payment of Counsel's Fees and all statutory and regulatory fee whatsoever) and in respect of cancellations on less than five working days' written notice the full amount of the services contracted for as set out in the applicable Initial Instruction, without prejudice to England & Lyle Ltd other rights. The Client agrees this is a genuine pre-estimate of England & Lyle Ltd losses in such a case. For the purposes of this clause, the Client's failure to provide England & Lyle Ltd with adequate man- power or comply with its other obligations under clause 3.1 to enable England & Lyle Ltd to perform its obligations shall be deemed to be a cancellation of the services and subject to the payment of the damages set out in this clause.
- 3.4 In the event that the Client or any other third party, not being a sub-contractor of England & Lyle Ltd, shall omit or commit anything which prevents or delays England & Lyle Ltd from undertaking or complying with any of its obligations under this Agreement or any Initial Instruction ('Client's Default'), then England & Lyle Ltd shall notify the Client as soon possible and
- (a) England & Lyle Ltd shall have no liability in respect of any delay to the completion of any project resulting from the Client's Default;
 - (b) If applicable, the project timetable will be modified accordingly; and
 - (c) England & Lyle Ltd shall notify the Client at the same time if it intends to make any claim for additional documentation costs incurred as a result of Client's Default and the payment of such costs and expenses shall be subject only to receipt of an itemised statement of expenditure.
- 3.5 Change control. Should either party request any alteration to this Agreement or an agreed Initial Instruction insofar as it relates to services, such requests and any subsequent alterations will be subject to the change control procedures set out in England & Lyle Ltd *Request for Change* form. Until such time as any alteration is formally agreed between the parties in accordance with such change control procedures, the parties will, unless otherwise agreed, continue as if such alteration had not been requested. An 'alteration' includes any proposed amendment to this Agreement or any Initial Instruction whether in whole or in part. For each such alteration which is agreed by England & Lyle Ltd and the Client, this Agreement or any relevant Initial Instruction, as the case may be, shall be amended to the extent necessary to give effect to that alteration.
- 4. RIGHTS IN MATERIAL**
- 4.1 England & Lyle Ltd will specify consultancy documents and materials if any to be delivered to the Client. 'Materials' are defined as being literary works or other works of authorship (such as consultancy documents, draft documents, documentation, reports, drawings and similar works) that England & Lyle Ltd may deliver to the Client as part of the consultancy services England & Lyle Ltd provides.
- 4.2 England & Lyle Ltd will deliver one copy of the specified consultancy documents and materials to the Client. England & Lyle Ltd grants the Client a non-exclusive, world- wide licence to use, execute, reproduce, display, perform, and distribute, within its company only, a copy of the Materials. England & Lyle Ltd will unless otherwise specified on the Schedule, retain ownership of all copyright, patent and other intellectual property rights in the consultancy documents and materials. Such licence shall be on the terms of England & Lyle Ltd Software Licence Agreement save as varied by this Agreement and its schedule.

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- 4.3 The Client shall reproduce the copyright notice and any other legend of ownership on any copies made under the licences granted in this Clause.
- 4.4 Except as may be otherwise agreed by England & Lyle Ltd in writing, England & Lyle Ltd shall have no obligation to provide support services for the Materials.
- 4.5 The Client shall be responsible for promptly obtaining and providing to England & Lyle Ltd all Required Consents necessary for England & Lyle Ltd to submit applications to regulatory bodies and other services used by the Client for which England & Lyle Ltd shall provide services hereunder. A Required Consent means any consents or approvals required to give England & Lyle Ltd and its sub-contractors the right or licence to access, use and/or modify (including creating derivative works) the Client's or a third party product and service used by the Client without infringing the ownership or licence rights (including patent and copyright) of the providers or owners of such products and services.
- 4.6 The Client agrees to indemnify, defend and hold England & Lyle Ltd and its affiliates harmless from and against any and all claims, losses, liabilities and damages (including reasonable attorneys' fees and costs) arising from or in connection with any claims (including patent and copyright infringement) made against England & Lyle Ltd, alleged to have occurred as a result of the Client's failure to provide any Required Consents.
- 4.7 Except as otherwise provided herein, no licence including an licence by implication, estoppel or otherwise, or any intellectual property right including but not limited to patents, copyrights, trade secrets and, trademarks is transferred to the Client.

5. WARRANTY; DISCLAIMER OF OTHER TERMS

- 5.1 Warranties. Except as expressly stated in this agreement and its schedules and without prejudice to clause 5.1 above, there are no warranties, express or implied, by operation of law or otherwise offered by England & Lyle Ltd to the Client in relation to the documentation or services to be provided. The express warranties contained in this agreement and its schedules shall not be expanded, diminished or affected by and no obligation or liability will arise or grow out of England & Lyle Ltd rendering of technical, or other advice or service in connection with any user documentation provided hereunder.
- 5.4 Limitation. England & Lyle Ltd liability arising out of this Agreement, regardless of the form of the action, whether in contract or tort, will not exceed the fee paid by the Client in relation to the services to which the cause of action relates.
- 5.5 Referrals. Notwithstanding any England & Lyle Ltd, recommendation, referral or introduction, the Client will independently investigate and test third party products and services and will have sole responsibility for determining suitability for use of such products} and services. England & Lyle Ltd shall have no liability with respect to England & Lyle Ltd relating to or arising from use of third party products and services.
- 5.6 Exclusion of Consequential Loss. In no event shall England & Lyle Ltd be liable for:
- (a) Any incidental, indirect, special or consequential damages, including but not limited to loss of use, revenues, profits or savings, even if England & Lyle Ltd knew or should have known of the possibility of such damages and even if an exclusive remedy fails of its essential purpose;
 - (b) Claims demands or actions against the Client by any person; or
 - (c) Loss of or damage to client's data from any cause.

6. INDEMNIFICATION

- 6.1 The Client shall indemnify and hold England & Lyle Ltd harmless against any claim brought against England & Lyle Ltd alleging that any consultancy documents or materials or other products or services provided by England & Lyle Ltd in accordance with the Client's specifications infringes a patent, copyright or trade secret or other similar right of a third party.

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7. PROTECTION OF PROPRIETARY INFORMATION

- 7.1 Definition. For purposes of this provision 'Proprietary Information' means any information and data of a confidential nature, including but not limited to proprietary, technical, developmental, marketing, sales, operating, performance, cost, know-how, business and process information, computer programming techniques and all record bearing media containing or disclosing such information and techniques, which is disclosed pursuant to this Agreement.
- 7.2 Nondisclosure. Each party ('Receiving Party') shall hold the other party's ('Originating Party') Proprietary Information in confidence and protect it from disclosure to third parties and shall restrict its use as provided in this Agreement. Each Receiving Party acknowledges that unauthorised disclosure of Proprietary Information may cause substantial economic loss to the Originating Party or its licensors. The Receiving Party shall inform its employees of their obligations under this provision I and instruct them so as to ensure such obligations are met.
- 7.3 Limitation. The obligation of non-disclosure shall not apply to if information that:
- (a) Was in the possession of or known by the Receiving Party prior to its receipt from the Originating Party;
 - (b) Is or becomes public knowledge without fault of the Receiving Party;
 - (c) Is provided to the Receiving Party without restriction on disclosure by a third, party, who did not violate any confidentiality restriction by such disclosure;
 - (d) Is made available on an unrestricted basis to the Receiving Party by the Originating Party or someone acting under the Originating Party's actual control;
 - (e) Is independently developed by the Receiving Party without reference to the Proprietary Information and without violation of any confidentiality restriction; or
 - (f) Is disclosed by the Receiving Party pursuant to statute, regulation or the order of a court of competent jurisdiction, provided the Receiving Party has previously notified the Originating Party in order to permit the taking of appropriate protective measures.
- 7.4 Survival. This clause 7 shall survive termination of this Agreement.

8. TERMINATION

- 8.1 Duration. This Agreement shall continue unless and until terminated as provided below.
- 8.2 Termination for Default. Without prejudice to other remedies, either party may terminate this Agreement for material default (upon written notice, the other party, in the case of a remediable breach, fails to cure the matters set forth in said notice within thirty (30) calendar days from the date of said notice.
- 8.3 Termination for Liquidation. If either party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within *Part I* of the *Insolvency Act 1986* or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other party shall be unable to pay its debts within the meaning of *Section 123* of the *Insolvency Act 1986* or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) then the other party may terminate this Agreement immediately upon written notice to said party.

The Client shall pay to England & Lyle Ltd the fees set forth in the initial offer letter which will form the relevant agreement or as may be otherwise agreed between the parties.

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9. GENERAL PROVISIONS

- 9.1 **Publicity.** Neither party shall reveal the terms of this Agreement to any third party without the prior written consent of the other, except to its professional advisers.
- 9.2 **Notices.** Any notice required or permitted by this Agreement to either party shall be deemed to have been duly given if in writing and delivered personally or sent by first class post to the party's address first written above, by registered or certified mail, postage prepaid, to the party's address first written above or by facsimile transmission.
- 9.3 **Assignment.** The Client shall not assign its rights or obligations or delegate its duties hereunder without the prior written consent of England & Lyle Ltd. Any attempted assignment or delegation in contravention of this Clause shall be void and of no effect.
- 9.4 **Non-waiver.** The waiver by either party hereto of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.
- 9.5 **Non-Solicitation.** During the term of this Agreement and for a period of twelve months thereafter neither party shall solicit or permit any subsidiary or associated undertaking to solicit the employment of any employee, agent or sub-contractor of the other who is directly involved in the performance of this Agreement. If either party breaches this clause with respect to an employee of the other, the breaching party shall pay to the other party by way of agreed damages and not as a penalty an amount equal to the wages or salary (together with all associated employer costs) paid by the other party in respect of such employee for twelve months preceding the date of the breach. For the solicitation of an agent or sub-contractor of the other, the breaching party shall pay all damages actually incurred by the non-breaching party.
- 9.6 **Use of England & Lyle Ltd Trademarks.** The Client shall not use the name, trade mark or trade name of England & Lyle Ltd in any manner without the prior written approval of England & Lyle Ltd.
- 9.7 **Independent Contractors.** England & Lyle Ltd and the Client are contractors independent of each other, and neither has the authority to bind the other to any third person or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.
- 9.8 **Data Protection.** The Client agrees that England & Lyle Ltd or any Related Company may process personal data (for example contact details) provided by the Client in connection with this Agreement ('Client Data ') for the purpose of this Agreement and/ or for the purposes connected with the Client's or any Related Company's business relationship, with England & Lyle Ltd. The Client shall ensure it obtains all similar data protection consents needed from its employees and contractors and others whose personal data it supplies to England & Lyle Ltd to give effect to this clause and hold England & Lyle Ltd harmless for any loss arising from breach by the Client of this provision. Such processing may also included transferring Client Data to other Related Companies world-wide and its storage in a centralised database. For the purposes of this clause Related Company shall mean any holding company from time to time of England & Lyle Ltd and/ or any subsidiary from time to time of England & Lyle Ltd or any such holding company (for which purposes the expressions 'holding company' and 'subsidiary' shall have the meanings given in *Section 736* of the *Companies Act 1985* including for these purposes bodies incorporated outside the United Kingdom.
- 9.9 **Governing Law and Severability.** This Agreement shall be governed by and construed in accordance with the laws of England and the parties submit to the jurisdiction of the English courts. If any provision of this Agreement is held invalid or unenforceable under any applicable law or be so held by applicable court decision, the parties agree that such invalidity or unenforceability shall not affect the validity and enforceability of the remaining provisions of this Agreement and further agree to substitute for the invalid or unenforceable provision a valid or enforceable provision which most closely approximates the intent and economic effect of the invalid provision within the limits of applicable law or applicable court decisions.
- 9.10 **Force Majeure.** Neither party shall be liable for non-performance or delays from causes beyond its reasonable control including but not limited to strikes (of its own or other employees), fires, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, or requirements or regulations of any civil or military authority .In the event of the occurrence of any of the foregoing, the date of performance shall be deferred for a period equal to the time lost by reason of the delay. The



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affected party shall notify the other in writing of such events or circumstances promptly upon their occurrence.

- 9.11 Entire Agreement. This Agreement and its schedules' set forth the entire agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, save that a confidentiality or non-disclosure agreement between the parties shall continue. Neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as duly set forth on or subsequent to the date of acceptance hereof in writing and signed by an authorised representative of the party to be bound thereby.
- 9.12 No Third Party Rights. Nothing in this Agreement is intended to, nor shall it, confer any right on a third party whether under the *Contracts (Rights of Third Parties) Act 1999* or otherwise.
- 9.13 No oral variation shall be permitted in relation to the written terms of this Agreement.