CONSULTANCY AGREEMENT

**BETWEEN**

## THE SCOTTISH ASSOCIATION OF CITIZENS ADVICE BUREAUX –

**CITIZENS ADVICE SCOTLAND (“CAS”)**

(Scottish charity number SC016637;

a company limited by guarantee, incorporated in Scotland (No.89892), having its Registered Office at 1st Floor, Spectrum House, Edinburgh EH7 4GB)

**AND**

**XXXXXX** (“**the Company**”)

**WHEREAS** CAS has issued an invitation to tender with Specification of Requirement and the Company, having access to appropriate skills and expertise, has submitted a proposal in response thereto, (“the Proposal”); and

**WHEREAS** CAS wishes to engage the Company to undertake research, and the Company has agreed to perform such services to deliver the Project (“the Services”) in the manner hereinafter described;

**NOW THEREFORE THE PARTIES DECLARE THAT THEY HAVE AGREED as follows:**

**1. Definitions**

1. For the purposes hereof the undernoted words and phrases shall be interpreted as follows:

“this Agreement” shall mean these terms and conditions, as the same may be varied by agreement in writing between the parties;

“Appendix” shall mean the Appendix annexed to, and which shall be deemed incorporated in, this Agreement;

“the Commencement Date” shall mean the date specified in the Appendix with effect from which the Services shall be deemed to have commenced;

“the Fee” shall mean the fee set out in the Appendix, or such other fee as may from time to time be agreed between the Parties. All fees are stated exclusive of Value Added Tax, (“VAT”);

“Intellectual Property Rights” shall mean all industrial and intellectual property of whatever nature anywhere in the world and all rights pertaining thereto, whether recorded or registered in any manner, or otherwise, including without prejudice to the foregoing generality, patents, trademarks, registered designs and applications for any of the same, copyright, design right, semi-conductor topography rights, database and software rights, mask works, trade secrets, know-how, business names, trade names, brand names and all other legal rights protecting intangible proprietary information, and the right to apply for the same;

“the Project” shall mean the project referred to above;

“the Project Personnel” shall mean those individual employees of the Company who are named in the Proposal as being responsible for the provision of the Services on behalf of the Company;

“the Results” shall mean any findings, formulae, know-how, drawings, specifications, photographs, samples, models, processes, procedures, instructions, software, reports, papers, correspondence, transcripts and any other technical or commercial information, data and documents of any kind, arising as a direct result of the provision of the Services. The Results shall include all Intellectual Property Rights therein or pertaining thereto;

“the Services” shall mean those services to be undertaken by the Company, in implementation of the Project, which are more specifically detailed in a part of the Appendix;

“the Service Period” shall mean the period set out in the Appendix during which the Services are to be carried out.

**2. Appointment and Duration**

2.1 CAS hereby appoints the Company to undertake the Services and the Company hereby accepts such appointment and agrees to undertake the Services in accordance with the terms and conditions hereinafter specified. Other than as may be agreed in writing between CAS and the Company, the Services will be performed by the Project Personnel. The Company shall have no right to assign its interest under this Agreement or to sub-contract any third party to perform any obligation(s) of the Company unless with the prior written agreement of CAS.

2.2 Unless otherwise agreed between the parties, the Services shall not be rendered within any premises of CAS, nor shall CAS be required to make any facilities or resources available to the Company.

2.3 Save where terminated earlier under Clause 7, the Company’s appointment shall be for the duration of the Service Period.

2.4 Subject to Clause 8, the Company shall complete the Project within the Service Period. For the avoidance of doubt, in this Agreement time shall be of the essence.

**3. Payment**

* 1. In consideration of the Company’s provision of the Services to deliver and complete the Project, and CAS confirming that the Services have been delivered and completed in a satisfactory manner, CAS shall pay to the Company the Fee. The Fee is stated exclusive of VAT which shall be payable as appropriate. Payment shall be made by CAS within 30 days of invoice date. Invoices should be submitted by the Company to CAS, 1st Floor, Spectrum House, Edinburgh EH7 4GB.
  2. CAS shall reimburse all reasonable expenses properly incurred by the Company pursuant to the provision of the Services, subject to the Company’s provision of appropriate receipts or vouchers in respect thereof.

**4. Results**

* 1. All Results shall vest in and become the sole property of CAS. The Company shall, at the request in writing of CAS, execute any assignation or other documentation reasonably required by CAS in order to effect the requirements of this Clause.

4.2 The Company shall, during the Service Period, provide CAS with interim reports on XXXXX basis and, at completion of the Services a final report, summarising the Services and the Materials arising therefrom. In addition, subject to the application of Clause 3.2, the Company shall attend any meeting which CAS may request to discuss the progress of the Services, the Materials or any matter relating thereto.

**5. Confidentiality**

5.1 Except in the proper course of its duties hereunder, neither Party, (“the Recipient Party”), shall disclose or publish any confidential information relating to the other, being information which may have come, or may come, to its knowledge prior to or during the Service Period, and which is, or is reasonably likely to be, information of a confidential or commercially sensitive nature of that other, (including information relating to customers and clients of that other), provided that such undertakings shall not apply to any information which:

(a) is or becomes generally known to others by publication or otherwise, other than as a result of any breach of the provisions of this Clause;

(b) is already in the possession of the Recipient Party at the time of its acquisition from the other; or

(c) is or becomes available to the Recipient Party from another source with the right to disclose the same;

5.2 The Company shall not publish any information arising from the delivery and completion of any of the Services to deliver and complete the Project unless it has the prior, written agreement of CAS.

**6. Warranties**

* 1. The Company shall use reasonable skill and care in performing the Services diligently and expeditiously.
  2. The Company warrants that the Materials shall have been produced or developed solely as a result of original effort by the Company or its employees, and that the Materials, or any part of the Materials, shall not infringe the intellectual property right of any third party or third parties.
  3. The Company shall indemnify CAS for all loss, damage or expense incurred by CAS and arising as a result of any claim that the Materials infringe the intellectual property right(s) of any third party.

**7. Termination**

7.1 Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other if that other shall commit any material breach of its obligations hereunder and, within fourteen days of having received notice from the party intimating such breach, shall have failed to remedy the same; or where that other enters into liquidation or has a receiver appointed or an administration order made in respect of its assets or is subject to similar insolvency procedure.

7.2 Upon termination:

1. the Company shall immediately return to CAS, without limitation, all documents, drawings, tools, equipment and items of any nature whatsoever supplied to the Company by CAS;
2. the Company shall forward to CAS all Materials developed to the date of termination including, without limitation, a report summarising the Services to such date and transcripts;

(c) subject to the Company’s compliance with sub-clause (b) above, all Fees accruing for Services properly and satisfactorily performed to the date of termination shall become immediately due and shall be paid in accordance with the provisions of Clause 3.

7.3 The provisions of clauses 4.1, 5, 6.3 and this clause 7 shall survive termination of this Agreement.

1. **Force Majeure**

8.1 Neither party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including, but not limited to, fire, strikes, insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, requirements or regulations of any civil or military authority (“an Event of Force Majeure”).

8.2 Either party shall give notice forthwith to the other upon becoming aware of any Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

8.3 If any Event of Force Majeure shall continue for more than six weeks, then CAS shall be entitled to terminate this Agreement forthwith by notice in writing. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

1. **General**

9.1 The Company shall act as an independent contractor to CAS and nothing in this Agreement shall be construed as constituting any partnership or employment relationship between CAS and the Company, or establishing the Company as an agent or representative of CAS.

9.2 This Agreement supersedes any previous agreement between the parties hereto in relation to the matters dealt with herein and represents, (together with the Appendix), the entire agreement between the parties hereto in relation to such matters. In the event that there shall arise any inconsistency or ambiguity between any term(s) of this Agreement and any provision contained within the Appendix, the provisions of this Agreement shall prevail.

9.3 No variation of this Agreement, including the Appendix, shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**10. Law**

10.1 This Agreement shall be governed by the Law of Scotland.

10.2 Any dispute arising out of the interpretation, validity or performance of, or otherwise in connection with, this Agreement shall be submitted to the exclusive jurisdiction of the Scottish courts.

10.3 The parties shall only submit a dispute to the jurisdiction of the Scottish courts under 10(2) above if they have:

1. Firstly, tried to resolve the dispute between themselves through consultation and negotiation, and the consultation and negotiation have failed to resolve the dispute to the satisfaction of the parties; and
2. Secondly, in response to the failure of the steps taken in paragraph (a) above, attempted to resolve the dispute through mediation and this has failed to resolve the dispute to the satisfaction of the parties.

**IN WITNESS WHEREOF** the parties have executed this Agreement as follows:

Signed on behalf of CAS

(Witness)

(Name) (Name)

(Title) (Address)

(Date)

Signed on behalf of the Company

(Witness)

(Name) (Name)

(Title) (Address)

(Date)

# **APPENDIX**

#### Part A

*The Services*

‘NAME OF PROJECT’ in accordance with the attached Specification and Accepted Proposal (Part B).

*The Service Period*

A total of XXXXXX days to be engaged from XXXXXX - XXXXX.

*The Fee*

XXXXXX

**Contacts**

|  |  |
| --- | --- |
| On behalf of CAS | The Contractor |
| NAME  JOB TITLE | NAME  JOB TITLE |
| Citizens Advice Scotland  2 Powderhall Road  Edinburgh  EH7 4GB | NAME OF ORGANISATION  ADDRESS  ADDRESS  POST CODE |
| Tel: 0131 550 XXXX | Tel: XXXXXX |
| Email: XXXXXXXX | Email XXXXX |

# **Part B**

Attached:

Specification of Requirement

Form of Proposal

Detailed Breakdown of Costs