

SAMPLE ONLY

DATED

2006

(1) PROFIT THROUGH CHANGE LIMITED

- and -

(2) ◆

**PROFESSIONAL SERVICES
AGREEMENT**

SAMPLE ONLY

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	COMMENCEMENT AND DURATION	2
3.	PROVISION OF SERVICES.....	2
4.	CHANGE CONTROL	3
5.	OBLIGATIONS OF THE CLIENT	3
6.	PAYMENT	4
7.	INFRINGEMENT OF THIRD PARTY RIGHTS	5
8.	INTELLECTUAL PROPERTY.....	6
9.	WARRANTY AND LIABILITY	6
10.	TERMINATION	8
11.	CONFIDENTIALITY AND SPECIFICATIONS.....	9
12.	LICENCES AND CONSENTS	10
13.	FORCE MAJEURE.....	10
14.	ASSIGNMENT	11
15.	NOTICES	11
16.	SEVERANCE	11
17.	THIRD PARTIES	12
18.	WAIVER.....	12
19.	VARIATION.....	12
20.	ENTIRE AGREEMENT	12
21.	GOVERNING LAW AND JURISDICTION	13
	SCHEDULE 1	14
	Services Order	14

THIS PROFESSIONAL SERVICES AGREEMENT is made on

200

BETWEEN

- (1) **PROFIT THROUGH CHANGE LIMITED** registered in England and Wales with registered number 05234137 and whose registered office is at Janus House 70 Woodleigh Avenue, Harborne, Birmingham B17 ONJ ("**Company**")
- (2) ♦ registered in England and Wales with registered number ♦ and whose registered office is at ♦ ("**Client**")

BACKGROUND

The Client agrees to engage the Company and the Company agrees to provide to the Client certain professional consultancy and managerial services on the terms and conditions set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"**Agreement**" means this Professional Service Agreement together with all schedules;

"**Company**" means Profit Through Change Limited;

"**Charges**" means the charges specified in the Services Order;

"**Client**" means the person indicated on the front of this Agreement;

"**Commencement Date**" means the date indicated in the Services Order;

"**Input Material**" means any documents or other materials and any data or other information provided by the Company to the Client for the purposes of this Agreement or any applicable Services Agreement;

"**Intellectual Property Rights**" means all rights available for the protection of any discovery, invention, name, design, process or works in which copyright or any rights in the nature of copyright subsist and all patents, database rights, trade marks, service

marks, registered designs, design rights, rights in know how and any other intellectual property rights (whether or not registered) subsisting from time to time and any applications for the foregoing anywhere in the world and trade secrets and other unpublished information;

"Location" means the location for the performance of the Services specified in the Services Order;

"Services" means the various services to be provided by the Company to the client in accordance with the terms of this Agreement and the relevant Services Order;

"Services Order" means an order agreed between the parties, setting out the Services required by the Client, in the form attached at Schedule 1;

"Output Material" means any documents or other materials and any data or other information created or developed by the Company in connection with the Services;

"Working Day" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.

1.2 In this Agreement (unless the context otherwise requires):

1.2.1 construction of this Agreement shall ignore the headings (all of which are for reference only); and

1.2.2 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2. COMMENCEMENT AND DURATION

This Agreement will commence on the Commencement Date and shall continue until terminated in accordance with the provisions of this Agreement.

3. PROVISION OF SERVICES

3.1 The Customer shall be entitled to order the Services by agreeing with the Company the Services Order.

3.2 The Company shall provide the Services specified in the Services Order upon and in accordance with this Agreement.

- 3.3 The Company shall use its reasonable endeavours to provide the Services within the timetable agreed between the parties and specified in the Services Order.
- 3.4 The Company shall provide the Services to the specifications and any additional terms and conditions agreed between the parties and detailed in the Services Order.
- 3.5 The Company will provide the Services at the Location.

4. CHANGE CONTROL

- 4.1 If at any time the Client wishes to make any change to the performance required under any Services Order, the Client will issue to the Company a reasonably detailed written request for change ("**Client Request**") signed by an authorised representative.
- 4.2 The Company will respond to the Change Request detailing any delays, increase in costs or other issues which will effect the performance required under the relevant Services Order.
- 4.3 If the parties agree to implement a Change Request, the relevant changes to the relevant Services Order will be recorded in writing and signed by authorised representatives.

5. OBLIGATIONS OF THE CLIENT

- 5.1 The Client shall take all steps to ensure that all relevant personnel of Client cooperate with and promptly provide such information required by the Company in order for the Company to provide the Services.
- 5.2 The Client irrevocably consents to the Company and its representatives, agents and sub-contractors entering the Location and any other premises for the purpose of providing the Services subject to the Company and any representative, agent or sub-contractor complying with the Client's reasonable policies and practices in relation to security and health and safety.
- 5.3 The Client shall comply with its responsibilities set out in this Agreement and the Services Order.

- 5.4 The Client shall make available all information, facilities and personnel reasonably required by the Company for the performance of its obligations under this Agreement and the Services Order.
- 5.5 The Client shall make available all office, information and telecommunications facilities the Company may reasonably require to carry out the Services.
- 5.6 The Client shall pay the Charges in accordance with the terms of this Agreement.

6. PAYMENT

- 6.1 The Client will pay to the Company the Charges and all other charges and amounts which fall due under this Agreement at the times and in accordance with the Services Order.
- 6.2 All sums due under this Agreement will be paid by the Client within 30 days of the date of the invoice or on the due date for payment specified in, if earlier.
- 6.3 If any sum payable to the Company under this Agreement, other than a sum the subject of a bona fide dispute, by the Client is in arrears for more than 30 days after the due date, the Company reserves the right without prejudice to any other right or remedy to:
 - 6.3.1 charge interest on such overdue sum on a daily basis from the original due date until paid in full at a rate of 4% over the base rate for the time being of Lloyds Bank plc; and/or
 - 6.3.2 suspend the provision of the Services on 7 days' prior written notice.
- 6.4 Subject to the Company receiving prior written approval (such approval not to be unreasonably withheld or delayed) from the Client, the Client will reimburse the Company for all reasonable travelling, subsistence and out-of-pocket expenses incurred in connection with the performance of this Agreement, including attendance at the Location, subject to the provision of supporting vouchers and receipts. Such expenses will be invoiced to the Client monthly in arrears.
- 6.5 The Charges, all other charges, expenses and sums payable by the Client to the Company under this Agreement do not include Value Added Tax, sales or any similar

tax, import or customs duties and like or other taxes, imposts and surcharges, which will be paid additionally by the Client to the Company at the then prevailing rate.

- 6.6 The Client is not entitled to withhold payment of any amount due to the Company by way of any set-off or counterclaim.
- 6.7 The Company reserves the right to alter or withdraw at any time any credit allowed to the Client.
- 6.8 The Company may offset any amount owing to it from the Client against any amount owed to the Client by the Company.

7. INFRINGEMENT OF THIRD PARTY RIGHTS

- 7.1 If at any time it is alleged that the Services infringe the rights of any third party in the UK or if in the Company's reasonable opinion such an allegation is likely to be made, the Company may at its option and its own cost:
 - 7.1.1 modify or re-perform the Services without reducing the overall performance of the Services in order to avoid the infringement; or
 - 7.1.2 procure for the Client the right to continue to benefit from the Services.
- 7.2 If any claim is made or action brought or threatened which alleges infringement of the rights of any third party:
 - 7.2.1 the Client shall notify the Company as soon as it becomes aware of any such claim;
 - 7.2.2 the Company shall have control over and, at its own cost, shall conduct any such proceedings in such manner as it shall determine; and
 - 7.2.3 the Client shall provide all reasonable assistance as the Company may request.
- 7.3 The Client shall indemnify the Company against all loss, liability and cost which the Company incurs in carrying out of the Services in accordance with the Client's specifications which give rise to any infringement or alleged infringement of the rights of any third party.

8. INTELLECTUAL PROPERTY

- 8.1 Any Intellectual Property Rights created in relation to the Services shall vest in the Company and the Client shall do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this clause 8.1.
- 8.2 All Intellectual Property Rights in any Input Material shall remain the property of and vested in the Company.
- 8.3 All Intellectual Property Rights subsisting in all Output Material shall be vested in and the exclusive property of the Company.
- 8.4 The Company shall grant to the Client a non-exclusive, revocable, personal licence to use the Input Material and Output Material in connection with the Services.
- 8.5 The Client undertakes to execute, sign and do all such instruments, applications, documents, acts or things as may reasonably be required by the Company to enable the Company or its nominee to enjoy the full benefit of the provisions in this Agreement, including without limitation any rights assigned under clause 8.1.
- 8.6 If the Company does not become the owner of the Intellectual Property Rights in any Output Material, with effect from the date upon which the Output Material is created, the Client shall grant to the Company an exclusive, worldwide, irrevocable, perpetual, royalty free licence to use and exploit and to authorise any third party to use and exploit any Intellectual Property Rights subsisting in any Output Material which are not assigned by the Client to the Company or are not owned by the Company pursuant to clause 8.1.

9. WARRANTY AND LIABILITY

- 9.1 The Company warrants that the Services will comply with their specification and will be performed with reasonable skill and care.
- 9.2 Except as set out in this clause 9, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non supply or delay in supplying the Services are excluded to the extent permitted by law.

- 9.3 Subject to the provisions in clause 9.6 below, the Company is not liable to the Client in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of, or in connection with, the supply, non supply or delay in supplying the Services or otherwise in connection with this Agreement:
- 9.3.1 loss or damage incurred by the Client as a result of third party claims;
 - 9.3.2 loss of actual or anticipated profits;
 - 9.3.3 loss of business opportunity;
 - 9.3.4 loss of anticipated savings;
 - 9.3.5 loss of goodwill;
 - 9.3.6 injury to reputation; or
 - 9.3.7 any indirect, special or consequential loss or damage howsoever caused even if the Company was advised of the possibility of them in advance.
- 9.4 Subject to clauses 9.4 and 9.6, the entire liability of the Company arising out of or in connection with the supply, non supply or delay in supplying the Services, or otherwise in connection with this Agreement or any Service Order, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, is limited in aggregate to the total value of the Charges paid under the applicable Services Order.
- 9.5 Subject to clauses 9.4 and 9.6 but notwithstanding clause 9.6, the entire liability of the Company in contract, tort (including negligence or breach of statutory duty) or otherwise for loss or damage to the Client's tangible property resulting from the Company's negligence is limited to £◆ in respect of each event or series of connected events.
- 9.6 Nothing in this Agreement shall operate to exclude or restrict the Company's liability for:
- 9.6.1 death or personal injury resulting from negligence; or
 - 9.6.2 fraud or deceit.

10. TERMINATION

10.1 The Company may terminate:

10.1.1 this Agreement with not less than 14 days written notice to the Client;

10.1.2 any individual Service Order or any part of the Services provided under any Service Order in accordance with the notice period provided in the Services Order.

10.2 The Company may on or at any time after the occurrence of any of the Terminating Events in clause 10.4:

10.2.1 suspend performance of the Services;

10.2.2 terminate this Agreement or any individual Services Agreement forthwith by giving notice to that effect to the Client.

10.3 The Client may terminate with immediate effect by written notice to the Company upon the Company committing a Terminating Event (as defined in clause 10.4).

10.4 For the purposes of clauses 10.2 and 10.3 the "**Terminating Events**" are:

10.4.1 the relevant party ("**Breaching Party**") being in breach of any obligation of this Agreement or any Service Order;

10.4.2 a meeting being convened, a petition presented, an order made, an effective resolution passed, or notice given for the Breaching Party's winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or

10.4.3 an application being made, or resolved to be made by any meeting of the Breaching Party's directors or members, for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator being appointed; or

10.4.4 an incumbrancer taking possession, or a receiver or manager or administrative receiver being appointed, of the whole or any part of the Breaching Party's assets; or

- 10.4.5 the Breaching Party ceasing or suspending payment of any of its debts or being unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or
- 10.4.6 a proposal being made for a composition in satisfaction of the Breaching Party's debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986.
- 10.5 If the Company becomes entitled to terminate an individual Services Order it may also, at its option, terminate any other applicable Services Order and/or this Agreement.
- 10.6 On termination of the Agreement or any Services Order pursuant to clause 10 or 13.2, any indebtedness of the Client to the Company shall become immediately due and payable and the Company is relieved of any further obligation to perform Services to the Client pursuant to that Services Order.

11. CONFIDENTIALITY AND SPECIFICATIONS

- 11.1 In this clause 11, "**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party ("**Disclosing Party**") to the other party ("**Receiving Party**") whether before or after the date of this Agreement including, but not limited to, information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.
- 11.2 During the term of this Agreement and after termination or expiry of this Agreement for any reason the Receiving Party:
- 11.2.1 shall not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
- 11.2.2 shall not disclose Confidential Information to an person except with the prior written consent of the Disclosing Party or in accordance with clauses 11.3 and 11.4;
- 11.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

- 11.3 During the term of this Agreement the Receiving Party may disclose Confidential Information to any of its directors, other officers, employees and sub-contractors ("**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- 11.4 Before disclosure of Confidential Information to a Recipient, the Receiving Party shall ensure that such Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was party to this Agreement.
- 11.5 Clauses 11.2 to 11.4 do not apply to Confidential Information which:
- 11.5.1 is at the Commencement Date or becomes at any time after that date publicly known other than by the Receiving Party's or Recipient's breach of this Agreement;
 - 11.5.2 can be shown by the Receiving Party to the Disclosing Party's reasonable satisfaction to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
 - 11.5.3 is or becomes available to the Receiving Party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure;
 - 11.5.4 is required to be disclosed by law.

12. LICENCES AND CONSENTS

If a licence or consent of any third party including any third party software supplier is required for the supply of the Services by the Company, the Client will obtain such licence or consent at its own expense and produce evidence of it to the Company on demand.

13. FORCE MAJEURE

- 13.1 In this condition 13, "**Force Majeure Event**" means any circumstance beyond the control of the Company including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by

suppliers or materials shortages but, for the avoidance of doubt, nothing shall excuse the Client from any payment obligations under this Agreement.

13.2 If the Company is prevented, hindered or delayed from performing the Services under this Agreement by a Force Majeure Event the Company may, at its sole option, and without being liable for any loss or damage suffered by the Client as a result:

13.2.1 suspend performance of the Services while the Force Majeure Event continues;

13.2.2 terminate any Services Agreement forthwith by giving notice to that effect to the Client.

14. ASSIGNMENT

14.1 The Client may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, this Agreement without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed).

14.2 The Company is entitled at any time to assign or deal with the benefit of this Agreement or any Services Order, or sub-contract any work relating to any Service Order.

15. NOTICES

Any notice given by one party to the other in connection with a Contract must be in writing and may be delivered personally or by pre-paid post and in the case of post will be deemed to have been given 3 Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

16. SEVERANCE

16.1 If any term of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or

unenforceability shall not affect the other terms which shall remain in full force and effect.

16.2 If any term of this Agreement is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

17. THIRD PARTIES

A person who is not party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

18. WAIVER

The rights and remedies provided by this Agreement may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Company shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of this Agreement or of a default under this Agreement shall not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.

19. VARIATION

No variation or alteration of any of the provisions of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party.

20. ENTIRE AGREEMENT

20.1 This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes cancels and nullifies any previous agreement between the parties relating to such matters.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to

either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

20.3 Nothing in this clause 20 shall operate to exclude any liability for fraud.

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

21.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with this Agreement.

SAMPLE ONLY

SCHEDULE 1

Services Order

Services Order Number

This Agreement is made between

Name :

Address :

hereinafter referred to as "CLIENT" and Profit Through Change Limited, hereinafter referred to as "Company".

In consideration of payment of the charges referred to herein Company agrees to provide the services referred to in accordance with the Professional Services Agreement (the "Agreement") dated [].

ITEM	DESCRIPTION OF SERVICES	COSTS (£)
	Commencement Date: Notice period required by Client for Company to terminate Services Order: Services:	
TOTAL COST (EXCLUDING VAT)		

This Agreement is hereby accepted on the terms of the Agreement which we have read and agreed.
FOR AND ON BEHALF OF THE CLIENT.

Signed:.....
Name:.....
Title:.....

ACCEPTED FOR AND ON BEHALF OF
Company

Signed:.....
Name:.....
Title:.....
Date:.....

SAMPLE ONLY

SIGNED by ◆)
for and on behalf of Profit Through)
Change Limited)

SIGNED by ◆)
for and on behalf of)
◆)