

Schedule A – Standard Terms and Conditions

Doc Ref: TC005

1. Definitions

1.1 In this Agreement the following words and expressions shall have the meaning set out below and other capitalised words shall have the meaning set out in the Cover Page or any Schedule:

"**Acceptance**" means the passing of the acceptance tests pursuant to clause 2, and "**Accepted**" shall be construed accordingly;

"**Acceptance Testing**" means the process of review conducted with the Client in order to approve the Project or Specification;

"**Client Content**" means the information, data and software provided to the Developer by the Client for incorporation into the Project;

"**Design Storyboard**" means one or more creative design concepts produced for the Project;

"**Downtime**" means the working time of employees of the Developer which becomes unproductive and which cannot be sold at the Developer's Standard Rates.

"**Draft Project Plan**" means a proposed schedule of work for the execution of the Project. (where applicable)

"**Error**" means any material failure of the Project or part to comply with the Specification;

"**Intellectual Property Rights**" means any and all registered and unregistered copyright patents, design rights, database and compilation rights, Marks (and related goodwill), trade secrets and other intellectual property rights, howsoever arising and in whatever media, and any applications for their protection or registration and all renewals and extensions anywhere in the world;

"**Marks**" means any and all names, brands, logos, trade marks, service marks, trade names and domain names;

"**Password**" means the code/s which facilitate access to the Project and its configuration;

"**Project**" means the internet related project to be designed, implemented, tested and supplied by the Developer, and further described in the Specification; and

"**Project Plan**" means the schedule of work for the execution of the Project which has been signed off between the Client and the Developer (where applicable)

"**Specification**" means the functional and / or technical specification written by the Developer to define and agree the scope of the project with the Client.

"**Slippage**" means the failure of the Client to perform any task, meet any deadline or reach any milestone assigned to the Client within the timescales specified in the Project Plan.

"**Standard Rates**" means the hourly or daily cost the Developer charges for the provision of its services as exist from time to time.

1.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender include any other genders, and words denoting persons include firms and corporations and vice versa.

1.3 Unless otherwise stated, a reference to: (a) a clause or a Schedule is a reference to a clause of or schedule to this Agreement. Clause headings are for ease of reference only and do not affect the construction of this Agreement; (b) "include" and "including" shall be construed without limitation; and (c) any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof then in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, licences, conditions or permissions made thereunder.

2. Development and Acceptance

2.1 Subject to the payment of the Fees and the timely provision of Client Content by the Client, the Developer agrees to design and implement the Project using reasonable endeavours and in accordance with the Specification, the Project Plan and the other provisions of this Agreement.

2.2 The Developer shall notify the Client when the Project or any agreed part is available for Acceptance Testing. Unless otherwise provided by the Client, in accordance with the Project Plan or amendment to the Project Plan agreed in writing between the Client and the Developer, the Developer shall test the Project or part and report all the results to the Client. The Client shall notify the Developer of any Errors in that version of the Project within 48 hours of it occurring.

2.3 If the Client notifies the Developer of any Errors, the Developer shall use its reasonable endeavours to correct such Errors and, subject to clause 2.5, clause 2.2 shall apply again to such Project or part.

2.4 If the Client does not notify the Developer of any Errors within 14 days as provided in clause 2.3, or if the Client notifies the Developer that there are no Errors in that version, then the Project or the relevant part shall be Accepted. [Unless otherwise agreed, the Project shall not be Accepted until all the parts of the Project are Accepted].

2.5 If clause 2.2 applies more than three (3) times in relation to any particular Project or part then this shall be a breach of the agreement by the Developer.

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Project Planning and Replanning

2.6 Once the requirements for a Project are known, the Developer shall produce a Draft Project Plan for the Project and submit this to the Client for approval. The Client shall provide feedback on the Draft Project Plan, within 5 working days to the Developer. The Developer will update the Draft Project Plan as necessary and agree any amendments with the Client. The Client and the Developer will then sign off the Draft Project Plan at which point the Draft Project Plan will become the Project Plan.

2.7 In the event that the Client suspects or that Slippage occurs, the Client shall advise the Developer in writing in advance of the relevant task completion date, deadline or milestone specified in the Project Plan. In this event, the Developer will use its reasonable endeavours to re-plan the Project. Any time required to replan the Project and approve a new Project Plan with the Client will be charged by the Developer and any Downtime incurred by the Developer will be invoiced to the Client at the Developer's Standard Rates.

2.8 The Client may request that the Project is placed on hold at any stage after payment of 50%. Such a request must be sent by the Client in writing to the Developer. Any time spent on the Project not yet invoiced by the Developer, together with any Downtime (charged at the Standard Rates) or costs of any materials or services will be invoiced. The Client must inform the Developer in writing of its intention to resume the Project which will be subject to the Developers prevailing Standard Rates.

3. Amendments to Specification

3.1 The parties agree that amendments to the Project Plan can only be made and agreed in writing. If at any time the Client wishes to amend the Project Plan or any aspect of the implementation of the Project, the Client shall provide the Developer with written details together with such further information as the Developer may require in order to assess the proposed amendments.

3.2 The Developer shall, within a reasonable time of receipt of all of the information specified in clause 3.1, submit to the Client a revised Project Plan and quotation for any additional Fees required in order to implement the amendments proposed by the Client (the "Response").

3.3 If the Client wishes to accept the Response, then it shall do so within 20 working days of receipt of the Response, in which case this Agreement (including the Specification, Project Plan and the Fees) shall be amended in accordance with the Response otherwise work shall continue by the Developer without amendment.

4. Support

If it is agreed that Support Services (as contained in Schedule F) shall be provided by the Developer as stated in an approved estimate, quotation or proposal agreed with the Client, the Developer shall provide the Support Services for the period using reasonable skill and care.

5 Client Obligations

5.1 The Client agrees:

- (a) that this Agreement does not include the provision of equipment, telecommunications or other services necessary to host or access the Project and the Client is responsible for providing and maintaining suitable equipment, telecommunications and support services to facilitate access to the Project;
- (b) to keep all Passwords secret at all times; and
- (c) to provide Client Content as expressly set out in the Project Plan and comply with any of its other obligations under the Project Plan (including payment).

6. Payment

6.1 Any deposit payment made by the Client to the Developer shall be non-refundable.

6.2 The Developer shall invoice the Client and, subject to clause 6.3, the Client shall pay the Fees and Support Fees and any other charges due to the Developer within thirty (30) days of the invoice date. All Fees and other charges are subject to VAT.

6.3 If any sum due to the Developer remains outstanding after thirty (30) days from the invoice date then, without prejudice to any other rights and remedies of the Developer, such sums shall attract interest in line with statutory rights of bank base rate plus two percent, applied daily for each and every day payment is overdue until payment is made in full. The Developer also reserves the right to charge penalties for each and every occurrence of chasing the overdue payment.

6.4 If any sum due to the Developer remains outstanding after thirty (30) days from the invoice date then, without prejudice to any other rights and remedies of the Developer, the Developer shall suspend the provision of any services to the Client until the outstanding invoice amount, plus any interest incurred, is settled in full by the Client.

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7. Warranties

7.1 Each party warrants to the other that it has the full right, power and authority to enter into and perform this Agreement and has not entered into any arrangement which in any way conflicts with this Agreement or inhibits, restricts or impairs its ability to perform its obligations under this Agreement.

7.2 The Client warrants that it has sufficient rights (including Intellectual Property Rights) in the Client Content to grant to the Developer the rights set out in this Agreement and has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for the Developer to provide the Project.

7.3 The Developer warrants that it has sufficient rights (including Intellectual Property Rights) in and relating to the Project to grant to the Client the rights set out in this Agreement and has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for the Client to make commercial use of the Project.

7.4 Except as expressly provided this Agreement, each party expressly disclaims any further representations, warranties, conditions or other terms, express or implied, by statute, collaterally or otherwise, including but not limited to implied warranties, conditions or other terms of satisfactory quality, fitness for a particular purpose or reasonable care and skill.

8 Intellectual Property Rights

8.1 The copyright in any methodologies and technologies provided by the Developer for the Project shall remain in the Developer or its licensors. All Intellectual Property rights created, whether alone or jointly, by the Developer in connection with the Project shall by way of present and future assignment be assigned with full title guarantee to the Client.

8.2 The Developer grants the Client a royalty-free, worldwide, non-exclusive licence to use and modify any methodologies and technologies provided by the Developer.

8.3 The Developer waives any moral rights as defined in sections 77 to 83 of the Copyright, Designs and Patents Act 1988 subsisting in any copyright work created for the Client under this Agreement.

8.4 Nothing in this Agreement shall be taken to prevent the Developer from using any expertise acquired or developed during the performance of this Agreement in the provision of services for other companies or on its own behalf.

9 Term

The Agreement shall commence on the Commencement Date and shall continue until the end of the Support Period unless and until terminated in accordance with clause 14 ("Term").

10 Indemnities and Insurance

10.1 Each party shall indemnify and keep the other party fully and effectively indemnified on demand against any liability, damage, expense, claim or cost (including reasonable legal costs and expenses) suffered by the other party as a result of any breach by the first party of the warranties set out in clause 7 of this Agreement.

10.2 To take the benefit of an indemnity, that party shall: (i) notify the other party promptly in writing and in any event within ten (10) business days of first learning of any such claim, lawsuit, action or proceeding; (ii) consent to the other party having the sole authority to control the defence and/or settlement of any such claim, lawsuit, action or proceeding; and (iii) provide reasonable co-operation and assistance to the other party, at that party's expense, in defending any such claim, lawsuit, action or proceeding.

10.3 The Developer must have in force and maintain with a reputable insurance company professional indemnity insurance to a value of £250,000.

11 Limitation of Liability

11.1 Save as provided in clauses 10.1, 11.2 and 11.3, neither party shall be liable in contract, tort (including negligence) or otherwise arising in connection with this Agreement for: (i) consequential, indirect or special loss or damage; or (ii) any loss of goodwill or reputation; or (iii) any economic losses (including loss of revenues, profits, contracts, business or anticipated savings) in each case, even if the relevant party has been advised of the possibility of such loss or damage and howsoever incurred.

11.2 Save for clauses 10.1 and 11.3, both parties agree that the maximum liability of either party in contract, tort (including negligence) or otherwise arising in connection with this Agreement shall be limited £250,000 to twice the aggregate Fees and Support Fees paid or payable by the Client or £10,000, whichever is the greater].

11.3 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees acting in the course of their duties.

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12 Force Majeure

12.1 Either party will not be liable for any failure or delay in performing its obligations under this Agreement to the extent that this failure or delay is the result of any cause or circumstance beyond the reasonable control of that party including acts of god, war, civil commotion or industrial dispute and that failure could not have been prevented or overcome by that party acting reasonably and prudently. If either party is prevented from performing its obligations for a period exceeding six (6) months due to Force Majeure then the other party may terminate this Agreement on one month's written notice.

13 Confidentiality and Data

13.1 During the Term of this Agreement and for two (2) years thereafter, each party will treat as confidential all information that it obtains concerning, but not limited to, the business, finances, technology and affairs of the other, ("**Confidential Information**").

13.2 Each of the parties will use at least the same degree of care (and not less than a reasonable degree of care) it uses to prevent the disclosure of its own confidential information of like importance, to prevent the disclosure of Confidential Information of the other party.

13.3 Each party will promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.

13.4 The provisions of this clause 13 shall cease to apply to: (i) information that has come into the public domain other than by breach of this clause or breach of any other duty of confidence; (ii) information that is obtained from a third party without breach of this clause or breach of any other duty of confidence; and (iii) information that is required to be disclosed by a regulatory or government body or court of competent jurisdiction with power to compel the disclosure.

13.5 In the event of termination or expiration of this Agreement, each party shall return or on request of the other party, destroy the Confidential Information of that party.

13.6 Each party will comply with its obligations pursuant to the Data Protection Act 1998.

14 Termination

14.1 Either party may terminate this Agreement on 90 days prior written notice.

14.2 Each party shall have the right to terminate this Agreement on written notice in the event that the other:

(a) commits any material breach of the terms of this Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) days of service of a notice specifying the breach and stating the intention to terminate the Agreement if not remedied;

(b) holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986);

(c) has a receiver, administrator, or other encumbrancer take possession of, or appointed over, or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; or

(d) ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.

14.3 Forthwith upon the termination or expiry of this Agreement, each party shall return to the other party all licensed materials and Confidential Information, and all copies in whole or part, of the other party or if requested by the other party, shall destroy them and certifying in writing to the Licensor that they have been destroyed.

14.4 Termination or expiry of this Agreement shall be without prejudice to any rights, liabilities or remedies of a party accrued before termination, nor shall it affect any provision of this Agreement which is expressly intended to come into or continue in force after termination or expiry.

16. General

16.1 **Relationship** Nothing in this Agreement shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties nor shall it be deemed to grant any authority not expressly set out in the Agreement or create any agency between the parties.

16.2 **Entire agreement** Each party confirms that this Agreement sets out the entire agreement and understanding between the parties and that it supersedes all previous agreements, arrangements and understandings between them relating to the subject matter of the Agreement. Each party confirms that it has not relied upon any statement, representation or understanding that is not an express term of this Agreement and shall not have any remedy in respect of any statement, representation or understanding which is not an express term unless made fraudulently.

16.3 **Waiver** No failure or delay by any party in exercising any right, power or remedy under this Agreement will operate as a waiver of that or any other right, power or remedy, nor will any single or partial exercise by either party of any right, power or remedy preclude any further exercise of any other right, power or remedy.

16.4 **Severance** To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that provision shall be deemed not to be a part of this Agreement, and

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it shall not affect the validity, lawfulness or enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

16.5 **Time of the Essence** Any times, dates or periods specified in the Agreement may be extended or altered by agreement in writing between the parties. However, time shall not be of the essence, except where it is expressly stated to apply.

16.6 **Rights of Third Parties** Nothing in this Agreement shall create or confer any rights or other benefits, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, in favour of any person other than the parties to this Agreement.

16.7 **Further Assurance** Each party shall, at the cost and expense of the other party, use all reasonable endeavours to do all such further acts and things and execute or procure the execution of all such other documents as that party may from time to time reasonably require, for the purpose of giving that party the full benefit of the assets, rights and benefits to be transferred to the other party under this Agreement.

16.8 **Assignment** Each party shall not be entitled to assign, transfer, charge or licence the whole or any part of its rights and/or obligations under this Agreement to any third party without consent of the other party.

16.9 **Governing law** This Agreement shall be construed in accordance with the laws of England and each party hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England.

16.10 **Miscellaneous** The rights and remedies of the parties under this Agreement are cumulative and in addition to any rights and remedies provided by law. Any variation to this Agreement must be in writing and agreed by the parties. This Agreement may be executed in counterpart.

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