



# Terms and Conditions - IT Accessed Ltd

## TERMS AND CONDITIONS

### 1. Definitions

- 1.1. In this Agreement the following words and expressions shall have the following meanings:
  - 1.1.1. "We", "Us", and "Our" shall mean the Supplier.
  - 1.1.2. "You" and "Your" shall mean the Client.
  - 1.1.3. "the Parties" means the Supplier and the Client.
  - 1.1.4. "the Project" means the development and delivery of the Services.
  - 1.1.5. "the Proposal" means the document summarising the work to be undertaken by the Supplier as required by the Client in respect of the Project.
  - 1.1.6. "the Services" means the provision of the services as outlined in the Proposal.
  - 1.1.7. "the Estimated Cost" means the amount as specified in the Proposal as an estimate for the work to be undertaken by the Supplier as required by the Client in respect of the Project –at the Billing Rate.
  - 1.1.8. "the Quoted Cost" means the amount as specified in the Proposal as a quote for the work to be undertaken by the Supplier as required by the Client in respect of the Project.
  - 1.1.9. "the Billing Rate" means the respective rate for the Services as specified in the Proposal where an Estimated Cost was provided.
  - 1.1.10. "the Requirements Specification" means any document(s) produced by us outlining details of the development work to be undertaken by the Supplier as required by the Client in respect of the Project.
  - 1.1.11. "Force Majeure" means in relation to either of the Parties any circumstances beyond the reasonable control of that party (including but not limited to any strike, lock out, or other form of industrial action, act of God, war, riot, accident, explosion or government action).

- 1.2. The headings of the paragraphs of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

### 2. Introduction

#### 2.1. Requirements

- 2.1.1. You wish to engage us to perform the Project subject to the terms and conditions of this Agreement.
- 2.1.2. We shall act as an independent contractor for the Project and not Your employee.

### 3. Our Responsibilities

- 3.1. We will work with You and complete the Project in accordance with any mutually agreed timetable – which may be revised from time to time as the project continues.
- 3.2. We undertake to treat as confidential any information provided to Us by You with regard to the Project up until the completion of the Project.

### 4. Our Rights

- 4.1. We are entitled to charge You at the Billing Rate for time spent in the provision of any service that does not form part of the Services.
- 4.2. We reserve the right to incur additional charges brought about by either a delay on Your part or the part of any additional suppliers to the Project.

- 4.3. You understand that a delay on Your part may entail a change in the due dates specified for the Project and that We reserve the right to unilaterally make such changes.

- 4.4. Unless we have agreed alternative arrangements to meet your security requirements, on accepting this Agreement You grant permission for Us to upload Your existing data and any related materials to a secure staging medium for the purposes of review.

- 4.5. We reserve the right to use the Project or any part of it as an example of Our work.

### 5. Your Responsibilities

- 5.1. You undertake to protect and keep secret any information provided by Us for the purposes of providing the Services.
- 5.2. You undertake that You will provide or procure the provision of all material, data and information as required by Us for the purposes of the Services in the formats and timescales agreed between us and as specified in the Proposal and any accompanying Requirements Specification.
- 5.3. You will provide and procure materials, data and information as required by Us for the purposes of the Services in the formats and timescales agreed between us and as specified in the Proposal and any accompanying Requirements Specification.

### 6. Your Rights

#### 6.1. Alterations:

- 6.1.1. You may request alterations to the Proposal or Requirements Specification or procure additional services to the Services at any time by giving Us notice in writing.
- 6.1.2. On receipt of a request for alterations to the Proposal or Requirements Specification or the procurement of additional services We will endeavour to provide You with details of the impact of such changes on the costs of the Project within 10 working days.
- 6.1.3. You must advise Us in writing whether or not You wish to proceed either with implementing the alterations or the procurement of additional services within 10 working days of receiving details of the impact of the required alterations on the Project.

#### 6.2. Delays:

- 6.2.1. You are entitled to notice if there is to be a significant delay or change in the Project. If the delay or change is due to Us or on the part of any additional suppliers with whom We have engaged any services then there will be no charge to You for such delay or changes. But if the delay or change to the Project or any part of it is incurred by You or Your suppliers then You will be charged for the cost of such changes or delay at an agreed amount.

### 7. Intellectual Property

- 7.1. Any software We develop or other materials we create remain Our intellectual property.

### 8. Liability

- 8.1. Nothing in this Agreement shall operate to limit or exclude any liability for death or personal injury arising from Our negligence or for any other liability which cannot by law be excluded or limited.
- 8.2. Subject to paragraph 8.1 in no event shall We or any of Our contractors be liable for any loss of profit or revenue, wasted management time, anticipated savings or indirect losses incurred by You for any consequential, incidental, special or exemplary damages incurred or suffered arising from or in connection with the Project except where such losses which arise from Our negligence and in such cases our liability shall be limited to the total cost of the Project.

- 8.3. Where You ask Us to introduce You to Our third party supplier contacts, whether in connection with the Project or otherwise, You acknowledge and agree that We are not responsible for the acts or omissions of such suppliers. Whilst we use our reasonable endeavours to research suppliers, their products and services, You must use Your own judgment to decide whether that supplier, product or service is suitable for Your needs. We shall not be liable for any loss or damage You may suffer as a result of any introduction You ask Us to make save as otherwise provided in this Paragraph 8.
- 8.4. Availability of Your IT System:
- 8.4.1. We are not responsible for any downtime of Your IT System at any time whilst We are implementing the Project.
- 8.4.2. We will not be held responsible for any losses or damage of any kind incurred by You for any downtime of Your IT System arising out of or in connection with our implementation of the Project.
- 9. Project Management and Schedule**
- 9.1. You shall nominate one person who shall act as Our primary point of contact for the Project. This person shall be responsible for providing all information and documentation as required by Us for the Project.
- 9.2. In the event of illness or injury on the part of Your representative You must inform Us of the expected impact on the Project of this illness or injury. Should the representative be absent for longer than 3 consecutive working days, an appropriately qualified alternative should be made available.
- 9.3. Throughout the Project You will be required where relevant to approve each phase of the Project. In approving a phase You automatically signify approval of the work carried out during that phase and authorise the next phase to proceed.
- 9.4. Any additional work carried out on phases that have been approved may incur further charges at such rate as shall be agreed between Us.
- 9.5. Subcontractors:
- 9.5.1. We reserve the right to assign appropriately skilled and experienced subcontractors to ensure the timely completion of the Project.
- 9.5.2. We confirm to You that any subcontractors used will possess the appropriate skills to complete their assigned tasks and take responsibility for any issues that may arise from their work.
- 10. Term of Contract and Termination**
- 10.1. This Agreement shall commence on the date stated at the beginning of this Agreement.
- 10.2. This Agreement shall remain in effect until successful completion of the Project subject to termination on any of the grounds set out in Paragraph 10.3.
- 10.3. This Agreement may be terminated by either You or Us in the event that:
- 10.3.1. the other of us commits a material breach of any of the terms and conditions of this Agreement and fails to remedy the same (if capable of remedy) within fifteen (15) days of being required by the other of them to do so; or
- 10.3.2. the other of us goes into liquidation or shall be the subject of any Petition for winding up; or
- 10.3.3. the other of us makes any assignment or arrangement for the benefit of its creditors or ceases or threatens to cease to carry on business;
- 10.3.4. a receiver or administrator is appointed to either of us over the whole or any part of its assets; or
- 10.3.5. the other of us shall become unable to pay its debts as they become due in the ordinary course of business.
- 11. Pricing and Payment**
- 11.1. The Client shall pay in full to Us a deposit of 33% plus VAT of either the Quoted Cost or the Estimated Cost of the Project on acceptance of the Proposal and before any work commences on the Project.
- 11.2. Any work carried out for You which is not covered by the Proposal and/or any accompanying Requirements Specification will incur additional costs. By agreement between us any additional work will be either priced at the appropriate hourly rate at the time when such additional works are requested or the Billing Rate will be recalculated to include such additional works.
- 11.3. Where a Quoted Cost was provided You shall pay the balance of the Quoted Cost plus any additional costs and charges to Us within fifteen days of the date of invoice.
- 11.4. Where an Estimated Cost was provided You shall pay the remaining amount due, calculated at the Billing Rate plus any additional costs and charges to Us within fifteen days of the date of invoice.
- 11.5. Interest at the rate of 4% above the base rate of NatWest Bank plc shall be charged by Us on all outstanding invoices until payment in full is made both before and after judgement.
- 12. Force Majeure**
- 12.1. If the performance of any obligations under this Agreement by either of us is affected by Force Majeure it shall immediately notify the other of us of the nature and extent of it.
- 12.2. Neither of us shall be deemed to be in breach of this Agreement or otherwise be liable to the other by reason of any delay in performance or non-performance of any of its obligations in this Agreement to the extent that such delay or non-performance is due to any Force Majeure which has been notified to the other of them in writing.
- 12.3. If the Force Majeure in question prevails for a continuous period in excess of two calendar months we shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 13. General**
- 13.1. Nothing in this Agreement shall create or be deemed to create any partnership or joint venture between the parties.
- 13.2. This Agreement, the Proposal and any accompanying Requirements Specification constitute the entire understanding between us with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between us relating to the contents of this Agreement.
- 13.3. This Agreement shall not be released, discharged, abandoned, changed or modified in any manner whatsoever except by an instrument in writing signed by us.
- 13.4. This Agreement shall be governed by and construed in all respects in accordance with the Laws of England and we submit to the exclusive jurisdiction of the English Courts.
- 13.5. Each party shall bear its own costs in respect of the negotiations, drafting, preparation, execution and performance of this Agreement.
- 13.6. Any notice or other information required by this Agreement to be given by either of us shall be in writing and may be given by hand or sent by pre-paid first class post or by facsimile transmission or by electronic mail.
- 13.7. Any notice given by post shall be deemed to have been given on the third day after the envelope containing it was posted. Proof that the envelope containing any such notice was properly addressed, pre-paid and posted and that it has not been returned to the sender shall be sufficient evidence that such notice has been duly given.
- 13.8. Any notice sent by facsimile or electronic mail shall be deemed duly sent on the date and time of transmission or sending. Proof of the facsimile or electronic mail being correctly addressed and transmitted and that no error report indicates that it was not delivered shall be sufficient evidence that such notice has been duly given.