

Prolifics Testing Limited – Software Testing Service, Terms and Conditions

1. Definition

Client means name of client as stated in Acceptance of Proposal.

Prolifics means Prolifics Testing Limited or its representatives or subsidiaries.

Agreement means the Form of Agreement and the documents contained therein.

Work means all activities and services required to be performed for the Client in accordance with this Agreement.

Intellectual Property Rights means all proprietary rights including but not limited to copyright, registered designs, design rights, semiconductor topography right, patents, trademarks, trade secrets and service marks.

Input Material means any documents or other materials, and any data or other information provided by the Client relating to the Software Service.

Output Material means any documents or other materials, and any data or other information provided by Prolifics Testing Limited relating to the Software Service.

2. Client's Obligations

The Client shall furnish all resources required in order that Prolifics can carry out its obligations under this Agreement. Notwithstanding the omission of any detail from the description of the Work, all activities and services which may reasonably be related to the Work and which are necessary for the correct performance and completion of such Work in accordance with this Agreement are deemed to be included.

3. Price

All prices shall remain fixed and firm and not subject to variation of any kind for the duration of this Agreement. Invoices for Work will be submitted to the Client as per the terms stated in Deliverables, Pricing and Payment. Prolifics shall be entitled to vary their prices from time to time by giving not less than one month's notice to the Client.

Payment shall be made to Prolifics within 30 days of receipt of the correct invoice. Any queries with regard to invoices raised should be passed to our Accounts Department within 10 days of receipt of the invoice.

If payment is not made on the due date, Prolifics shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 4% above the base rate from time to time of National Westminster Bank plc from the due date until the outstanding amount is paid in full.

All prices quoted to the Client for the provision of the Work are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

4. Change

If at any time either Prolifics or the Client wishes to alter all or any part of the Work, then the party proposing the alteration shall provide the other with full written particulars of such alterations and with such further information as may reasonably be required.

Prolifics will submit to the Client as soon as is reasonably practicable a full written quotation for such alterations specifying what changes will be required to this Agreement.

Upon receipt of such quotation from Prolifics, the Client may choose either to:-

- 4.1 accept such quotation in which case this Agreement shall be amended accordingly, or to:
- 4.2 not proceed with the proposed alterations in which case this Agreement shall continue in force unchanged.

5. Warranties and Liabilities

5.1 Prolifics warrants to the Client that the Work will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Client's requirements and at the intervals and within the times referred to within this Agreement.

5.2 Prolifics shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client.

5.3 Except in respect of death or personal injury caused by Prolifics's negligence, or as expressly provided in this Agreement, Prolifics shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Prolifics, its servants or agents or otherwise) which arise out of or in connection with the provision of the Work or their use by the Client, and the entire liability of Prolifics under or in connection with the Agreement shall not exceed the amount charged by Prolifics for the provision of the Work, except as expressly provided in this Agreement.

5.4 Prolifics shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of Prolifics's obligations in relation to the Work, if the delay or failure was due to any cause beyond Prolifics's reasonable control.

6. Unforeseen Circumstances

Neither party shall be liable for any breach of this Agreement due to any unforeseeable cause including war, rebellion, sabotage, riots, floods, fires or explosions or any other cause which is beyond the reasonable control and without the fault or negligence of the party affected. The Client shall immediately notify Prolifics of the occurrence of or upon reasonably anticipating the occurrence of such an event.

Costs incurred by either party as a result of such an event shall be borne by the party incurring the cost. If such an event causes an increase in the time required for the performance of any part of the Work, Prolifics may request an extension of time and agree the costs involved. Such request shall be processed as a change to this Agreement.

Either party may terminate this Agreement by written notice where an unforeseeable cause persists for a period greater than one month.

7 Materials

The Client shall at its own expense supply Prolifics with all necessary Input Material within an agreed time scale to enable Prolifics to provide the activities and services in accordance with this Agreement. The Client shall be responsible for ensuring the accuracy of all Input Material.

The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. Prolifics shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault howsoever caused.

8 Title and Risk

All test documentation and other products that are held electronically or otherwise are the property of the Client unless otherwise specified. It is the responsibility of the Client to safeguard the storage of this data. Unless specified elsewhere, Prolifics reserves the right to obtain copies of scripts etc. on removable media.

9 Termination

- 9.1 Prolifics may at any time terminate this Agreement in whole or part by written notice to the Client. The notice will specify the extent to which this Agreement is terminated and the effective date of such termination. Upon receipt of such notice the Client shall provide all assistance reasonably required.
- 9.2 Should the Client issue written notice of termination in whole or part of the Agreement, the Client will be liable to Prolifics for the recovery of direct costs reasonably and necessarily incurred up to the date of the termination and as may not be mitigated after termination and a reasonable allowance for profit on the Work completed at the date of termination.
- 9.3 Should either party need to terminate the Agreement, at least four weeks' notice in writing should be given.
- 9.4 Either party may terminate this Agreement by written notice in the event that the other party is the subject of a bankruptcy order (or in Scotland is sequestrated or in Northern Ireland the Client is adjudicated bankrupt) or becomes insolvent or makes any arrangement or composition with or assignment for the benefit of its creditors or if any of its assets are the subject of any form of seizure; or goes into liquidation, either voluntary or compulsory; or if a receiver or administrator is appointed; or a material change of control in the management or ownership of the other party.

10 Liability

This clause shall apply to all liability of the parties to each other under or in connection with or in relation to the subject matter of this Agreement howsoever arising and whether liability arises in contract, tort or otherwise and whether resulting from any breach of a party's obligations under this Agreement or from any act, omission, statement, advice or recommendation, whether negligent or not of its employees agents or sub-contractors, and whether or not the loss or damage had been foreseeable.

Nothing stated in this clause shall be construed or be deemed as operating to exclude or restrict either party's liability in damages or other for any liability that cannot be excluded or limited at law or in tort.

Neither party excludes liability for direct physical damage to tangible property of the other to the extent it results from its negligence or the negligence of its employees, agents or sub-contractors but Prolifics's liability in this respect, including any costs and expenses relating to any and all claims, shall not exceed one million pounds sterling (£1,000,000).

Neither party shall, in any event, be liable for loss of profits, goodwill, revenue, anticipated savings or any other like economic loss nor for any damages for indirect, special or consequential loss or damage.

Prolifics's remedy in respect of any and all claims to which this clause shall apply shall be restricted to damages

11 Intellectual Property Rights Indemnity

Notwithstanding any other provision of this Agreement, the Client shall without limitation defend Prolifics against all actions, claims and proceedings brought anywhere in the world and shall indemnify Prolifics against all damages, costs and expenses arising from any infringement or alleged infringement of any Intellectual Property Rights for any Work carried out by Prolifics for the Client under this Agreement or Prolifics's exercise of its rights pursuant to this Agreement. Prolifics and the Client shall notify each other immediately in writing of any infringement or alleged infringement referred to above of which they become aware.

The property and any intellectual property rights in any output material shall unless otherwise agreed in writing between the Client and Prolifics belong to Prolifics, subject only to the right of the Client to use the output material for the purposes of assessing the output material. The property of and any intellectual property rights in any input material shall belong to the Client.

12 Insurance

The Client shall maintain throughout the term of this Agreement, with an insurer of good repute, indemnity insurance covering inter alia its obligations and liabilities under this Agreement such insurance to provide public liability insurance of not less than two million pounds sterling (£2,000,000) in respect of any one claim and professional indemnity insurance of not less than two million pounds sterling (£2,000,000) in respect of any one claim. The Client will on request provide Prolifics with a copy of the policy wording and premium receipts in respect of such insurance policies.

13 Assignment and subcontracting

Prolifics reserves the right to assign or subcontract this Agreement or delegate any of its obligations or any part thereof without the Client's prior written consent.

14 Independent Contractors

The parties are independent contractors. Neither party may act on the other party's behalf without prior written consent.

15 Laws, regulations and permits

The Client shall comply with all laws, by-laws, statutes, rules and regulations. The Client shall obtain all permits and comply with all access regulations required for performance in accordance with this Agreement.

16 Publicity

The Client or Prolifics shall not make any announcement concerning this Agreement or the Work to any member of the public, press or business entity without the prior written consent of other.

17 Personnel

Prolifics always use suitably qualified personnel.

18 Communications/notices

All formal notices required to be given under this Agreement shall be given in writing and shall be served to the addressees at addresses detailed in the Form of Agreement or as otherwise notified by one party to the other.

19 Confidentiality

Confidential Information means any information disclosed or obtained by either party under this Agreement and notified to the recipient as confidential. Neither party will disclose any Confidential Information to any third party without the disclosing party's consent. Confidential Information may be disclosed by the recipient if such party can show that such information is in the public domain without any breach of this Agreement, is in its lawful possession prior to disclosure, is independently generated or is provided by a third party in lawful possession thereof.

20 General

The Client shall provide Prolifics with timely systems administration, technical support and suitable expertise in the testing of applications for the duration of this Agreement. The Client will also provide a timely turn around on any deliverables required, e.g. draft test plan, workload engineering document.

21 Site Conditions

The Client shall allow Prolifics personnel access to the Client's premises to carry out the necessary activities and services and furnish them with such facilities and materials as is necessary to carry out the Work, ensuring a stable environment, which is fully functional and useable, e.g. the software can be used reliably and consistently.

The Client shall acquaint Prolifics personnel with the conditions at the place of Work, including the nature and location of the Work, the availability of utilities, the people working in the area and the estimation of equipment required for performing the Work. Failure of the Client to properly assess conditions at the place of Work shall mean that Prolifics shall be relieved from its obligations to complete the Work in accordance with this Agreement.

22 Health and Safety

The Client shall at all times maintain the areas of Work in a clean, tidy and safe condition. The Client shall undertake to ensure that Prolifics personnel are informed of all the necessary health and safety procedures whilst on the Client's site.

23 Waiver

No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

24 Entire Agreement

This Agreement is the final, complete and exclusive statement of the parties' agreement with respect to the subject matter of this Agreement and supersedes all prior negotiations. The parties shall not be bound by, or be liable for any statement or understanding not set forth or referenced herein. The invalidity or unenforceability of any part of this Agreement shall not affect the validity or enforceability of the remaining parts.

Commitments made under this Agreement shall be subject to the terms hereof. Any other terms stated on either party's documentation used in relation to this Agreement shall be of no effect.

All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

25 Survival

The provisions of this Agreement which by their nature extend beyond termination or completion of this Agreement will survive and remain in full effect.

26 Law

This Agreement is governed by and construed in accordance with English Law and subject to the non-exclusive jurisdiction of the English Courts.