

Digital Interactive Ltd

Standard Terms & Conditions

This is **Schedule One** referred to in the Agreement between Digital Interactive Ltd and The Customer

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Digital Interactive Ltd Standard Terms and Conditions

2. Definitions and Interpretation

- 2.1. In the Contract the following additional words and expressions will have the following meaning unless the context otherwise requires:
- 2.1.1. "Acceptance Form" means the Digital Interactive Ltd Acceptance Form which describes the Products and Services to be provided by Digital Interactive Ltd to the Customer;
 - 2.1.2. "Agreed Rates" means any agreed rates for Services, as set out in the Acceptance Form or any payment plan Attachment;
 - 2.1.3. "Attachment" means any document other than a Schedule or EULA which is indicated on the Acceptance Form as forming part of the Contract;
 - 2.1.4. "Background IPR" means any tools, technology, know-how or software which Digital Interactive Ltd uses in the provision of the Services and which Digital Interactive Ltd intends to re-use;
 - 2.1.5. "Confidential Information" means any and all trade secrets and confidential information of a party, including, but not limited to, software, Fees, information concerning products, potential products, new business ideas, concepts, business accounts, financial, pricing or contractual arrangements or other dealings, transactions or affairs, reports, recommendations, advice or tests, notes, drawings or other materials relating to the design of any software, source and program object codes and development plans, whether in writing, in electronic form or otherwise, and whether designated as confidential or not;
 - 2.1.6. "Costs" means all reasonable costs or expenses incurred by Digital Interactive Ltd, its employees or representatives in providing the Services for the delivery of the items as detailed in the Acceptance Form;
 - 2.1.7. "Customer Contact" means any person nominated as such by the Customer pursuant to the Contract;
 - 2.1.8. "Customer Items" means any information, software and data to be provided by the Customer or a third party on the Customer's behalf which Digital Interactive Ltd requires to carry out the Services;
 - 2.1.9. "Documentation" means any documentation provided by Digital Interactive Ltd (whether in written or electronic or other form) relating to the use or operation of the Products;
 - 2.1.10. "EULA" means the end-user licence agreement(s) provided with the Products;
 - 2.1.11. "Fees" means the sums to be paid by the Customer to Digital Interactive Ltd in respect of the Products and Services, as set out in the Acceptance Form and any payment plan Attachment;
 - 2.1.12. "Force Majeure" means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Contract, including Act of God, fire, flood, lightning, war, revolution, act or terrorism, strikes, lock-outs or other industrial action, whether of the affected party's own employees or others, and including unavailability of any infrastructure being provided by a third party, such as a telecoms provider;

- 2.1.13. "IPR" means any rights in or to, but not limited to, copyright, design rights, database rights, patents, trade marks, brand names, trade names, technical information or know-how or confidential information and any other rights in respect of any other industrial or intellectual property, whether registrable or not and wherever existing in the world and including, without limitation, all rights to apply for any of the foregoing rights;
- 2.1.14. "Products" means the Digital Interactive Ltd software products to be supplied to the Customer as set out in the Acceptance Form;
- 2.1.15. "Schedule" means a schedule which is indicated on the Acceptance Form as forming part of the Contract;
- 2.1.16. "Services" means the Professional Services, Support and Maintenance Services or Hosting Services to be provided by Digital Interactive Ltd pursuant to the Contract, as set out in the Acceptance Form and any Services Attachment;
- 2.1.17. "Working Hours" means Digital Interactive Ltds normal working hours which are 9:00am to 5:30pm UK Time every day excluding weekends and recognised public holidays in the United Kingdom.
- 2.1.18. "Maintenance Fees" shall have the same meaning as in the Software Maintenance Terms and Conditions.
- 2.1.19. "Maintenance Services" shall have the same meaning as in the Software Maintenance Terms and Conditions.
- 2.1.20. "Server" means any computer capable of running the Software and providing access to the Users.
- 2.1.21. "Software Maintenance Terms and Conditions" means the Software Maintenance Terms and Conditions.
- 2.1.22. "Third Party Software" means any software in respect to which Digital Interactive Ltd is not the copyright holder.
- 2.2. Words denoting the singular will include the plural and *vice versa*, and references to persons will include an individual, company, corporation, firm or partnership. References to any statute, statutory provision, rule or regulation will include references to the same as from time to time amended, extended, re-enacted or consolidated and include all related subordinate legislation.
- 2.3. Clause headings are used in the Contract for reference only and will not affect interpretation. References to Clauses in these Standard Terms and Conditions or in any Schedule or Attachment are to the clauses of the Standard Terms and Conditions or such Schedule or Attachment (as appropriate), unless otherwise specified.
- 2.4. If there is any inconsistency between:
 - 2.4.1. (a) the **Standard Terms and Conditions** and (b) the terms set out in a **Schedule, EULA or Attachment** in respect of the Services, the terms in the Schedule, EULA or Attachment will take precedence;
 - 2.4.2. (a) and/or (b) as described in Clause 1.4.1 and the terms in an **Acceptance Form**, the terms of the Acceptance Form will take precedence unless otherwise expressly specified or agreed.

3. Scope and Duration

- 3.1. The Contract will commence on the Commencement Date and will be provided for the period specified on the Acceptance Form or, if no period is so specified, until the end of the month in which the first anniversary of the Commencement Date occurs (the "Initial Licence Period") unless this Contract is terminated earlier in accordance with Clause 10.
- 3.2. On expiry of the Initial Licence Period the term will be automatically renewed on an annual basis.

4. Products

- 4.1. Digital Interactive Ltd will deliver the Products together with any Documentation to the Customer at such time as agreed between the parties, failing which as notified by Digital Interactive Ltd to the Customer. The Customer must notify Digital Interactive Ltd in writing of non-delivery within 7 days of the date of intended delivery.
- 4.2. Title to any hardware or equipment to be provided to the Customer under the Contract, including any media upon which software is provided, will not pass to the Customer until all payments due to Digital Interactive Ltd under the Contract have been made. The risk in any such hardware or equipment and in all Products will pass to the Customer on delivery of such items to the delivery address specified in the Contract.
- 4.3. The Customer undertakes to use each Product only in accordance with the accompanying EULA and such other licence terms as may be agreed by Digital Interactive Ltd in writing.
- 4.4. Digital Interactive Ltd will not be liable for any loss or damage caused by or resulting from any Defect in any Product if the loss or damage occurred after the Customer had been supplied with any update or new version of the Product which did not contain the Defect concerned.

5. The Customer's Obligations

- 5.1. The Customer will:
 - 5.1.1. provide such information in its possession or control as Digital Interactive Ltd reasonably requires for the performance of its obligations under this Contract;
 - 5.1.2. work in a co-operative and constructive manner with Digital Interactive Ltd and such other third parties as Digital Interactive Ltd may require (including, without limitation, any third party suppliers) to the extent necessary for the effective provision of the Products and Services;
 - 5.1.3. nominate a suitably skilled and properly experienced employee to act as the Customer Contact to co-ordinate and take responsibility for the Customer's obligations under the Contract and to make available the Customer Contact (or a suitable replacement) upon reasonable notice to attend any progress meetings with the Customer at a time and place to be agreed;
 - 5.1.4. at the reasonable request of Digital Interactive Ltd, promptly review, sign off, comment on and/or identify any issue which reasonably requires input from the Customer to facilitate the provision of the Products or Services; and
 - 5.1.5. if notified by Digital Interactive Ltd of any potential delay by Digital Interactive Ltd in the performance of its obligations under this Contract which is likely to be attributable to the Customer, take reasonable steps to address any issues giving rise to such potential delay.
- 5.2. If Digital Interactive Ltd is prevented from or delayed in carrying out its obligations under the Contract by reason of any delay, act or omission of the Customer (or of any party acting on behalf or under the instruction of the Customer) then notwithstanding anything else contained

in the Contract Digital Interactive Ltd will not be liable for such delay or failure and will be entitled to a time extension for performing its obligations at least equal to the period of delay. Any additional work required to be performed by Digital Interactive Ltd as a result of any such delay or failure will be paid for by the Customer. Any such delay lasting more than ten (10) working days will entitle Digital Interactive Ltd to terminate any affected Services or all of this Contract immediately upon written notice.

6. Payment Terms

- 6.1. Fees will be paid by the Customer within 30 days of the date of any invoice from Digital Interactive Ltd in respect of such Fees and in accordance with the terms of any payment plan Attachment.
- 6.2. The Customer will reimburse Digital Interactive Ltd for all Costs. This is a fixed price contract and all costs relate to the delivery of the items detailed in the Acceptance Form attached. Any requests by the Customer for additional Products and/or Services will be priced separately upon application and will be subject to the same terms and conditions. Any Costs will be invoiced monthly in arrears. Relevant receipts will be provided where obtained.
- 6.3. All sums expressed to be payable under the Contract are exclusive of VAT and governmental or other charges, which will be paid (if applicable) by the Customer in addition at the rates in force from time to time.
- 6.4. Time of payment will be a material condition and of the essence of the Contract. Interest at the rate of five per cent per annum above the base rate for the time being of the Bank of England will be payable by the Customer on all sums remaining unpaid from the due date until the date of actual payment. Interest will accrue on a daily basis and will be payable on demand.
- 6.5. The Customer may not withhold payment or set off any amount payable under this Contract.
- 6.6. Any additional services or provision of Services outside normal Working Hours, will be charged at Digital Interactive Ltd's standard rate of £150 per hour which is fixed for 12 months and thereafter subject to review.
- 6.7. Digital Interactive Ltd will be entitled to increase the Agreed Rates at any time on giving the Customer 60 days' written notice, but not more than once per calendar year.
- 6.8. Any credit extended by Digital Interactive Ltd to the Customer may be withdrawn or limited at any time by Digital Interactive Ltd. No credit will be given for returned Products unless otherwise agreed by Digital Interactive Ltd in advance.
- 6.9. The Customer agrees not to make any of the Products available to any third party without the prior written consent of Digital Interactive Ltd.

7. Confidentiality

- 7.1. Each party acknowledges that it may, in relation to this Contract, receive or have access to Confidential Information. Each party undertakes (a) not to use, reproduce or otherwise deal with such Confidential Information for a purpose other than the performance of its obligations under this Contract, and (b) not to divulge Confidential Information belonging to the other to any of its employees, agents and sub-contractors who do not need to know it, and to prevent its disclosure to or access by any third party without the prior written consent of the disclosing party. Each party will ensure that any party who is given access to the other party's Confidential Information pursuant to this Clause is made aware of the confidential nature of the Confidential Information and undertakes to keep it confidential in accordance with terms no less strict than those set out in this Clause 6.

- 7.2. The provisions of Clause 6.1 will not apply to the whole or any part of the Confidential Information to the extent that it is already in the public domain other than as a result of a breach of this Clause 6 or which the other is required to disclose by reason of a statutory or regulatory requirement having the force of law or by reason of an order of a court of competent jurisdiction.
- 7.3. The obligations under this Clause 6 will survive the termination of the Contract until such time as the Confidential Information enters the public domain other than through the receiving party's own fault.
- 7.4. **Publicity:** Notwithstanding the provisions of this Clause 6, Digital Interactive Ltd reserves the right to use an outline description of the Customer and the Services in its promotional literature and other marketing materials subject to prior approval by an authorised representative of the Customer.

8. Data Protection

- 8.1. Digital Interactive Ltd acknowledges that data supplied to it for the purposes of this Contract may comprise Personal Data. Subject to Clause 7.3, Digital Interactive Ltd undertakes that it will:
 - 8.1.1. use the Personal Data solely for the purposes of this Contract and solely in accordance with the instructions of the Customer; and
 - 8.1.2. act only on instructions from the Customer; and
 - 8.1.3. ensure that appropriate technical and organisational measures are taken against unauthorised or unlawful processing of Personal Data and against accidental loss, or destruction of, or damage to such Personal Data
- 8.2. For the purposes of this Clause 7 "Personal Data" will have the meaning given in the Data Protection Act 1998.
- 8.3. The Customer warrants to Digital Interactive Ltd that:
 - 8.3.1. it will provide Digital Interactive Ltd with all relevant instructions in relation to compliance with data protection legislation including, but not limited to, providing appropriate data protection notices and instructions in relation to the positioning of such notice;
 - 8.3.2. the instructions given by the Customer in respect of the Personal Data will at all times be in accordance with the relevant laws of the United Kingdom and/or applicable jurisdiction; and
 - 8.3.3. it is legally entitled to process the Personal Data.
- 8.4. The Customer will indemnify and keep Digital Interactive Ltd indemnified from and against any fines, costs, claims, damages or expenses arising from a breach of the warranties contained in this Clause 7.

9. Warranty

- 9.1. Digital Interactive Ltd undertake that, provided it is operated in accordance with Digital Interactive Ltd's instructions, the Products will perform in accordance with Digital Interactive Ltd's published specification and the Documentation existing at the date of delivery. Digital Interactive Ltd does not guarantee that the Products are free of minor errors not materially affecting such performance.
- 9.2. Except for the limited warranty described above, there are no other warranties, either expressed or implied, concerning the Products or Documentation. Digital Interactive Ltd excludes, and expressly disclaims, all express and implied warranties of merchantability or fitness for purpose.

10. Limitations of Liability

- 10.1. Digital Interactive Ltd has used all reasonable efforts to develop the Products so that they are stable and reliable. Because there is such a diverse range of computer systems, network infrastructures and operating environments, Digital Interactive Ltd cannot warrant that the Products will be compatible with every computer system, network infrastructure and operating environment. It is the Customer's responsibility to ascertain whether the Products are compatible with its computer system, network infrastructure and operating environment.
- 10.2. Digital Interactive Ltd does not warrant that the Products will satisfy the Customer's requirements. It is the Customer's responsibility to determine whether the Products will satisfy its requirements. Digital Interactive Ltd gives no performance warranties.
- 10.3. Digital Interactive Ltd does not warrant the uninterrupted use of the Products.
- 10.4. Digital Interactive Ltd does not warrant that the Products are free of "bugs", errors or defects. Digital Interactive Ltd shall not be responsible to the Customer for costs or damages incurred as a result of any such "bugs", errors or defects. The existence of such "bugs", errors or defects shall not constitute a breach of the Contract or any warranty.
- 10.5. To avoid any loss or inconvenience caused by faults with the Products, Digital Interactive Ltd shall back-up its data in accordance with best IT management practice, as set out in the Network, Server and Data Security Policy. Digital Interactive Ltd accepts no responsibility for lost or corrupted data, regardless of the cause, or the restoration thereof.
- 10.6. Digital Interactive Ltd shall not be responsible for any failure, delay or interruption in the Customer's use of the Products, including without limitation, system crashes, computer malfunctions, hardware or software faults, system errors, security breaches, theft, incompatibility issues, telecommunications problems, or Force Majeure.
- 10.7. Digital Interactive Ltd accepts no liability for security breaches, including without limitation, security breaches resulting from computer hackers, unlawful entry, unauthorised entry, theft, disgruntled employees and other fraudulent acts. While all reasonable efforts shall be made to ensure a secure environment for the transmission of data and other information, Digital Interactive Ltd accepts no liability for any security breaches.
- 10.8. Digital Interactive Ltd shall not be liable for any delay, damage, loss, injury, failure or breakdown that the Customer may suffer as a consequence of any defect or deficiency in the Products, including any delay, damage, loss, injury, failure or breakdown to other programs and equipment of the Customer.
- 10.9. Any statements contained on Digital Interactive Ltd's website, in its marketing literature or in client proposals shall not be deemed to widen Digital Interactive Ltd's obligations under the Contract.
- 10.10. Digital Interactive Ltd staff, agents and representatives have no authority to make any representations, statements, warranties, conditions or agreements that conflict with the Contract, unless made in writing by a duly authorised officer. Any such unauthorised representations, statements, warranties, conditions or agreements shall not bind Digital Interactive Ltd nor widen Digital Interactive Ltd's obligations under this Contract.
- 10.11. To the extent allowed by law, Digital Interactive Ltd disclaims all liability, whether in contract or tort, for any loss or damage arising from (a) the Customer's use of the Products, (b) the suspension or interruption of such use, (c) the termination of such use or (d) Digital Interactive Ltd's errors or omissions in providing the Maintenance Services. Such disclaimer applies to direct, indirect, special, incidental and consequential damages including loss of profit, loss of business, loss of revenue, loss of goodwill, loss of productivity, losses resulting from downtime of

the Customer's network, domain or e-mail system, losses resulting from system crashes, losses resulting from lost or corrupted data, documents or emails or the restoration thereof, or failure to achieve anticipated benefits, cost savings or production efficiencies. Digital Interactive Ltd shall not be liable for any delay, damage, loss, injury, failure or breakdown that the Licensee may suffer as a consequence of any defect or deficiency in the Products, including any delay, damage, loss, injury, failure or breakdown to the Customer's other programs and equipment.

- 10.12. Notwithstanding the exclusions, limitations and disclaimers in this clause and elsewhere in this Contract, if there is any event or circumstance resulting in liability to Digital Interactive Ltd, Digital Interactive Ltd's liability shall not exceed the aggregate Fees and Maintenance Fees (if applicable) paid by the Customer

11. Termination

- 11.1. Either party may terminate the Contract immediately on giving written notice to the other in the event that the other party after receiving a written notice from either party:
- 11.1.1. is in material, sustained or repeated breach of any of its obligations under the Contract and fails to remedy the breach (if capable of remedy) within 30 days after receipt of written notice by the first party stating the breach and requiring it to be remedied; or
 - 11.1.2. ceases trading or threatens to cease trading, or becomes apparently insolvent or has a trustee in sequestration appointed, combines with its creditors, or has a liquidator, receiver or administrator appointed over all or any of its assets (other than for the purposes of solvent amalgamation or reconstruction) or undergoes any analogous act or proceeding under foreign law; or
 - 11.1.3. (being an individual or, where it is a firm or partnership, any of its partners or members) has a petition presented for his or her bankruptcy; or
 - 11.1.4. (being a firm or partnership) proposes or has presented against it a petition for its dissolution,
- 11.2. For the purposes of Clause 10.1.1 a breach will be capable of remedy if the offending party could comply with the provisions in question in all respects other than as to the time for performance.
- 11.3. In addition to any other rights of termination contained in this Contract, if the Customer:
- 11.3.1. fails to pay any Fees when due in accordance with the terms of this Contract; or
 - 11.3.2. breaches any of the terms of this Contract in respect of confidentiality or warranties,
- Digital Interactive Ltd may, at its option:
- (a) suspend performance of any of the Services and/or delivery of the Products until the breach is remedied; or
 - (b) terminate the Contract or the provision of any part of the Products or Services and terminate any licenses granted in relation to the Products or Services.
- 11.4. Any of the Schedules may be terminated as if each constituted a separate agreement for any ground which is set out in this Clause 11.

12. Consequences of Termination

- 12.1. Any termination of this Contract will be without prejudice to any other rights or remedies of either party under this Contract or at law and will not affect any accrued rights or liabilities of either party at the date of termination nor will termination affect any rights or obligations of the

parties which are to be observed or performed after such termination including without limitation those obligations of confidentiality and warranties as set out in this Contract.

- 12.2. Upon termination of this Contract for whatever reason all Charges and other amounts due to Digital Interactive Ltd will become immediately payable by the Customer.
- 12.3. Within five (5) Working Days after the date of termination of this Contract, for whatever reason, each of the parties will deliver up to the other all property of whatever nature including, but not limited to, Confidential Information belonging to the other party which may be in its possession or under its control at the date of termination including any copies and the Customer hereby irrevocably authorises Digital Interactive Ltd to enter onto the Customer's premises at reasonable times, to enable it to retrieve any Digital Interactive Ltd property and equipment located there.

13. Non-solicitation

- 13.1. Each party hereby undertakes that it will not at any time while the Contract is in force and until the expiry of twelve (12) months after the date of termination of the Contract directly, or by its agent or otherwise, employ or solicit or endeavour to entice away from or discourage from being employed by the other party, any person who is or will have been for the duration of the Contract an employee of the other party. This Clause 12 will not restrict either party from employing (or offering to employ) any of the officers or employees of the other party who have responded, without solicitation, to general recruitment advertising issued by or on behalf of that party.

14. Force Majeure

- 14.1. Neither party will be liable for, or be considered to be in breach of or default under this Contract as a result of any event of Force Majeure. Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay) the performance of such party's obligations will be suspended during the period that the circumstances persist and that party will be granted an extension of time for performance of its obligations equal to the period of the delay. If the delay continues for more than four weeks, the party not delaying may terminate the Contract immediately on giving notice in writing to the other, and neither party will be liable to the other for the termination except that the Customer will pay Digital Interactive Ltd for all work carried out up to the date of termination.

15. Notices

- 15.1. All notices to be given under this Contract will be in writing and may be given personally, by recorded delivery post, by fax or by e-mail. Notices will be delivered to the address of the party in question as detailed on the Acceptance Form or as otherwise notified to the other party from time to time in writing.
- 15.2. Any notice will be deemed to have been received:-
 - 15.2.1. if delivered personally, at the time of delivery;
 - 15.2.2. if posted by recorded delivery, on the expiry of forty eight (48) hours after posting;
 - 15.2.3. in the case of fax, twelve (12) hours after the time of transmission provided that within twenty four (24) hours of transmission a copy of the fax is sent by post to the intended recipient; and
 - 15.2.4. in the case of e-mail, at the time that the e-mail enters the information system of the intended recipient provided that no error message indicating failure to deliver has been received by the sender.

16. General

- 16.1. **Assignment:** The Customer is not permitted to assign or novate the benefit and/or burden of the Contract without Digital Interactive Ltd's prior written consent. Digital Interactive Ltd is entitled to sub-contract its obligations under the Contract without the prior consent of the Customer.
- 16.2. **Entire Contract and Variations:**
- 16.2.1. The Contract contains the entire agreement between the parties in relation to the subject matter of the Contract and supersedes all previous negotiations, representations, undertakings and agreements both written and oral made between the parties with respect to the subject matter. No variation of these terms and conditions will be valid unless made or confirmed in writing by authorised signatories of both parties.
- 16.2.2. Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Contract or not) other than as expressly set out in this Contract as a warranty. The only remedy available to it for breach of the warranties will be for breach of contract under the terms of this Contract.
- 16.3. **Suitability of Products and Services:** The Customer acknowledges that it is the Customer's obligation to determine whether the Products and Services are fit for the purposes for which the Customer has ordered them, regardless of whether the Customer has expressed such purpose to Digital Interactive Ltd or whether Digital Interactive Ltd could reasonably have been aware of such purpose.
- 16.4. **Severability and Waiver:** If any provision of the Contract is judged to be illegal or unenforceable by a court of competent jurisdiction or other competent authority, the provision will be severed from the remainder of the Contract which will continue in full force and effect. No failure to exercise or delay by either party in exercising any right or remedy under the Contract or at law will operate as a waiver of the right or remedy or a waiver of any other rights and remedies.
- 16.5. **Escalation of Disputes:**
- 16.5.1. Any dispute or difference arising out of or in connection with the Contract will in the first instance be referred to Project Managers, failing which to the respective managing directors of Digital Interactive Ltd and the Customer.
- 16.5.2. Any disputes of a technical nature will be referred to an independent expert mutually appointed, whose decision will be final and not open to challenge. Any other disputes will be referred to arbitration by a single arbiter to be mutually appointed. In the event of failure to agree, the independent expert or arbiter will be nominated by the President of the Law Society of England and Wales on the application of Digital Interactive Ltd or the Customer.
- 16.6. **Relationship:** The relationship between the parties is as set out in the Contract and no employment, joint venture, partnership or agency relationship will be deemed to subsist between the parties and neither will have the authority to bind the other.
- 16.7. **Jurisdiction:** The Contract will be governed by and interpreted in accordance with the laws of England. The parties hereby submit to the exclusive jurisdiction of the Her Majesty's Courts.