

Ultimate Technologies Limited (UTL)

Standard Terms & Conditions

1. Interpretation

1.1

Definitions. In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.5.

Contract: the contract between UTL and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from UTL.

Deliverables: the deliverables (including reports and other documentation) as set out in the Proposal.

Initial Subscription: the date to which the Services were first provided.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Proposal: the description or specification of the Services provided in writing by UTL to the Customer.

Order: the Customer's written acceptance of either the Proposal or UTL's quotation.

Renewal Period: the period immediately commencing after the first 12 month subscription

Services: the services, including the Deliverables, supplied by UTL to the Customer as set out in the Proposal.

UTL: Ultimate Technologies Limited registered in England and Wales with company number 04290217.

2. Basis of contract

2.1

The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions (including the Proposal).

2.2

The Order shall only be deemed to be accepted when UTL issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of UTL which is not set out in the Contract. If there is an inconsistency between any of the provisions of these Conditions and the provisions of the Proposal, the provisions of the Proposal shall prevail.

2.4

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Proposal shall not constitute an offer.

3. Supply of Services

3.1

UTL shall supply the Services to the Customer in accordance with the Proposal in all material respects.

3.2

UTL shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3

UTL shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or

3.4

quality of the Services, and UTL shall notify the Customer in any such event.

UTL warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1

The Customer shall:

(a)

co-operate with UTL in all matters relating to the Services;

(b)

provide UTL with such information and materials as UTL may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(c)

obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;

5. Charges and payment

5.1

The Customer shall pay the Charges in accordance with the Proposal.

5.2

Except in the event of early termination of this Agreement, the Customer shall pay the Charges for the Initial Subscription Period and any Renewal Period or at otherwise provided for by this clause 5.

5.3

This clause 5.3 shall apply to the extent that the Charges, and the terms for their payment are not set out in the Proposal:

(a)

the Charges shall be calculated in accordance with UTL's standard daily fee rates from time to time enforced on a time and materials basis; and

(b)

UTL shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom UTL engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by UTL for the performance of the Services, and for the cost of any materials; and

(c)

The Customer shall make all requested payments in advance. The Services shall be provided to the Customer for a period of 30 days, which shall expire after said 30 days unless full payment is received

(d)

Following receipt of full payment the Services will be available for a 12 month period starting from the date the services were provided. After the expiry of this 12 month period, a further licence renewal will be required to be purchased at 20% of the original invoice price. Should no further payment be received following the expiry of the 30 day period, then the Services and Contract will automatically terminate.

(e)

Time for payment shall be of the essence of the Contract.

5.4

All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by UTL to the Customer, the Customer shall, on receipt of a valid VAT invoice from UTL, pay to UTL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.5

If the Customer fails to make any payment due to UTL under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per cent per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6. Intellectual property rights

6.1

All Intellectual Property Rights and all other rights in the Services and Deliverables shall be owned by UTL (**UTL IPR**).

6.2

UTL hereby licenses the UTL IPR to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties.

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- 6.3 If the Contract terminates under clauses 10.0, 10.2, 10.3, 5.3(d) or otherwise then the Licence granted in clause 6.2 shall terminate.
- 6.4 The Customer shall not sub-licence, assign or otherwise transfer the rights granted in clause 6.2.
- 6.5 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on UTL obtaining a written licence from the relevant licensor on such terms as will entitle UTL to license such rights to the Customer.
7. **Confidentiality**
A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.
8. **Inadequacy of damages and indemnity**
- 8.1 Without prejudice to UTL's other rights or remedies that it may have, the Customer acknowledges and agrees that damages alone would not be an adequate remedy for any breach by the Customer of clause 6 and/or clause 7. Accordingly, UTL shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of such clauses.
- 8.2 The Customer shall indemnify UTL against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by UTL arising out of or in connection with any breach by the Customer of clause 6 and/or clause 7.
- 8.3 This clause 8 shall survive termination.
9. **Limitation of liability**
- 9.1 Nothing in these Conditions shall limit or exclude UTL's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 Subject to clause 9.1:
- (a) UTL shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) UTL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed a sum equal to the Charges actually paid by the Customer to UTL.
- 9.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.4 This clause 9 shall survive termination of the Contract.

10. **Termination**
- 10.1 Without limiting its other rights or remedies, either party shall have the right to terminate the Contract by giving the other party 3 months' written notice.
- 10.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party (**Defaulting Party**) if:
- (a) If the Defaulting Party (being a company) shall pass a resolution for the winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction where the resulting entity is at least as credit-worthy as the Defaulting Party and assumes all of the obligations of the Defaulting Party under the Contract) or a court shall make an order to that effect; or
 - (b) If the Defaulting Party (being a natural person) shall die, or (being a partnership or other unincorporated association) shall be dissolved; or
 - (c) If the Defaulting Party shall cease to carry on its business or substantially the whole of its business; or
 - (d) If the Defaulting Party fails to pay any Charges when due (including the Initial Renewal Subscription)
 - (e) If the Defaulting Party becomes or is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or if a liquidator, receiver, administrator, administrative receiver, manager, trustee, or similar officer is appointed over any of the assets of the Defaulting Party.
- 10.3 Without limiting its other rights or remedies, UTL may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 21 days after being notified in writing to do so. On such termination the licence granted under clause 6.2 shall be revoked.
- 10.4 Without limiting its other rights or remedies, UTL shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and UTL if the Customer becomes subject to any of the events listed in clause 10.2, or UTL reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
11. **Consequences of termination**
On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to UTL all of UTL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, UTL shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all Deliverables which have not been fully paid for. If the Customer fails to do so, then UTL may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (d) clauses which expressly or by implication survive termination shall continue in full force and effect.
12. **Force majeure**
- 12.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of UTL including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of UTL or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident,

- breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 12.2 UTL shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 12.3 If the Force Majeure Event prevents UTL from providing any of the Services for more than 12 weeks, UTL shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 13. General**
- 13.1 **Assignment and other dealings.** UTL may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract. The Customer shall not, without the prior written consent of UTL, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 13.2 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.3 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default.
- 13.4 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by UTL.
- 13.6 **Governing law.** This Contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under this Contract.