

DIGITAL CLARITY LTD – STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Client: the person, firm or company who purchases Services from the Supplier.

Client's Engagement Manager: the Client's manager for the Engagement appointed in accordance with condition 5.1(a).

Contract: the Client's Order and the Supplier's acceptance of it under condition 3.

Deliverables: all products and materials developed by the Supplier in relation to the Engagement in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

Engagement: the scope of the project or engagement as described in the Engagement Letter.

Engagement Letter: the detailed letter to the Client describing the Engagement and setting out the estimated timetable (including without limitation Engagement Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Contract.

Engagement Milestone: a date by which a part of the Engagement is estimated to be completed, as set out in the Engagement Plan.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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.

Order: the Client's order for the supply of Services as set out in the Client's purchase order form, confirmation of order or specification.

Pre-existing Materials: materials which existed before the commencement of the Engagement.

Services: the services to be provided by the Supplier under the Contract.

Supplier: Digital Clarity Ltd

Supplier's Engagement Manager: the Supplier's manager for the Engagement, appointed in accordance with condition 4.3.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to **writing** or **written** includes faxes and e-mail.

1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Client's Order or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. EFFECT OF PURCHASE ORDER

The Client's Order constitutes an offer by the Client to purchase the Services specified in it on these conditions; accordingly, the Supplier's commencement or execution of work pursuant to the Order, shall establish a contract for the supply and purchase of those Services on these conditions. The Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Order shall not govern the Contract.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to manage and complete the Engagement, and to deliver the Deliverables to the Client, in accordance in all material respects with the Engagement Letter.

4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 The Supplier shall appoint the Supplier's Engagement Manager who shall have authority to contractually bind the Supplier on all matters relating to the Engagement. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Engagement Manager throughout the Engagement, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

- (a) co-operate with the Supplier in all matters relating to the Engagement and appoint the Client's Engagement Manager, who shall not have the authority to contractually bind the Client on matters relating to the Engagement;
- (b) provide in a timely manner such access to the Client's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation,

- any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Client in writing.
- 5.3 The Client shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.
- 5.4 Any consent given by the Supplier in accordance with condition 5.3 shall be subject to the Client paying to the Supplier a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to such employee or sub-contractor.
- 6. CHANGE CONTROL**
- 6.1 The Client's Engagement Manager and the Supplier's Engagement Manager shall meet at least once every month to discuss matters relating to the Engagement. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Client of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Engagement Letter; and
 - (d) any other impact of the change on the terms of the Contract.
- 6.3 If the Supplier requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.
- 6.4 If the Client wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Engagement Letter and any other relevant terms of the Contract to take account of the change.
- 7. CHARGES AND PAYMENT**
- 7.1 Condition 7.2 shall apply if the Services are to be provided on a time-and-materials basis. Conditions condition 7.3 and condition 7.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 7 shall apply in either case.
- 7.2 Where the Services are provided on a time-and-materials basis:**
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's daily fee rates as detailed in the Engagement Letter;
 - (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 6.00 pm on weekdays (excluding weekends and public holidays);
 - (c) the Supplier shall ensure that all members of its team complete time sheets recording time spent on the Engagement, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(d); and
 - (d) the Supplier shall invoice the Client monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 7.
- 7.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Engagement Letter. The total price shall be paid to the Supplier in instalments as set out in the Engagement Letter on its achieving the corresponding Engagement Milestone. All amounts due under this agreement shall be paid by the Client to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). On achieving a Engagement Milestone, the Supplier shall invoice the Client for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 7.4.
- 7.4 Any fixed price contained in the Engagement Letter excludes:
- (a) the cost of hotel, subsistence, travelling (beyond a distance of 30 miles from the centre of Rayleigh, Essex) and any other ancillary expenses reasonably incurred by the Engagement team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and
 - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate where applicable.
- 7.5 The Client shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.
- 7.6 Without prejudice to any other right or remedy that the Supplier may have, if the Client fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. ; and
 - (b) suspend all Services until payment has been made in full.
- 7.7 Time for payment shall be of the essence of the Contract.
- 7.8 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Client to the Supplier against any liability of the Supplier to the Client.
- 8. INTELLECTUAL PROPERTY RIGHTS**
- 8.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services as is envisaged by the parties.
- 8.2 The Client acknowledges that the Client's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Client.

9. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

9.1 The Client and supplier 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 Client, Supplier or its agents, and any other confidential information concerning the Supplier's and clients businesses or its products which may be obtained. The Client and supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know

9.2 All materials, equipment and tools, drawings, specifications and data supplied by either the Supplier or Client shall at all times be and remain the exclusive property of the originator, but shall be held in safe custody at its own risk and maintained and kept in good condition and shall not be disposed of or used other than in accordance with the owners written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

10. LIMITATION OF LIABILITY

10.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Client of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

10.4 the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 2 x the price paid for the Services or the sum of £2 million, whichever is the lower.

11. TERMINATION

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(c) to condition 11.1(i) (inclusive);

11.2 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

11.3 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

12. FORCE MAJEURE

The Supplier shall not in any circumstances have any liability to the Client under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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 sub-contractors.

13. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14. RIGHTS AND REMEDIES**
The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 15. SEVERANCE**
15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
15.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16. ENTIRE AGREEMENT**
16.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
16.2 Each party acknowledges that in entering into this agreement it does not rely on [and shall have no remedies in respect of,] any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 17. ASSIGNMENT**
17.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
17.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18. NO PARTNERSHIP OR AGENCY**
Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19. THIRD PARTY RIGHTS**
No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 20. NOTICES**
20.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:
 (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
 (b) sent by fax to its main fax number.
20.2 Any notice or communication shall be deemed to have been received:
 (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 (b) 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 [or at the time recorded by the delivery service.
 (c) if sent by fax, at 9.00 am on the next Business Day after transmission.
20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.
- 21. GOVERNING LAW**
The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.
- 22. JURISDICTION**
Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).