

SOFTWARE DEVELOPMENT AGREEMENT

1. SCOPE OF CONTRACT

- 1.1 The Supplier has experience and expertise in developing and implementing software projects.
- 1.2 The Customer wishes to procure a software system and related services from the Supplier.

2. DEFINITIONS

- 2.1 '*Charges*' means the charges payable for the Project.
- 2.2 '*Concept Document*' means the document which outlines the requirements for the System incorporated into this Agreement as the Concept Document Appendix.
- 2.3 '*Estimated Price*' means the price estimated for the Project as set out in the Charges Schedule.
- 2.4 '*Progress Meeting*' means a meeting held between the parties to discuss progress of the Project.
- 2.5 '*Project*' means the work to be undertaken and services to be performed by the Supplier to develop and implement the System.
- 2.6 '*Project Manager*' means the designated representative appointed by the Supplier or the Customer respectively as initially specified in the Designated Representatives Schedule.
- 2.7 '*Schedules*' means the schedules identified in this Agreement and incorporated into this Agreement.
- 2.8 '*Software*' means the software content of the System developed in accordance with these terms and conditions.
- 2.9 '*System*' means the business system required by the Client.
- 2.10 '*Third Party Software*' means all third party software owned by a third party but legally licensed to the Supplier for use in developing the Software.
- 2.11 '*Training*' means the training in using the System to be provided by the Supplier as described in the Training Schedule.

3. DURATION

This Agreement commences on the date shown in the Schedule and will continue for the initial period of 12 months, after which it will remain in force until terminated by either party giving at least 90 days' notice of termination to the other party to expire on the last day of the initial term or at any time thereafter.

4. SUPPLIER'S OBLIGATIONS

The Supplier undertakes to:

- 4.1 provide its services diligently, expeditiously and with reasonable skill and care;
- 4.2 provide suitably skilled and appropriately experienced personnel to carry out the Project;
- 4.3 provide Training where required;
- 4.4 make all reasonable efforts to ensure that the Project is performed in a timely and efficient manner;
- 4.5 maintain accurate time sheets;
- 4.6 write the Software and complete the Project utilising such elements of the following procedural framework as may be deemed by the Supplier to be appropriate in the particular circumstances:

- (a) creating with the Customer's assistance the Concept Document;
 - (b) agreeing with the Customer the limitations of the System;
 - (c) agreeing with the Customer the order in which the modules of the Software will be written;
 - (d) discussing and agreeing with the Customer the contents of the first Software module;
 - (e) coding the first Software module, testing it and obtaining the agreement of the Customer that the results meet the requirements of the Project;
 - (f) where necessary, redefining and rewriting the first Software module, retesting it and obtaining the agreement of the Customer that the results meet the requirements of the Project;
 - (g) discussing and agreeing with the Customer the contents of the second and subsequent Software modules in the sequence stated in the Concept Document or such amended sequence as the parties may agree;
 - (h) coding the second and subsequent Software modules in the sequence stated in the Concept Document or such amended sequence as the parties may agree, installing them on the Customer's Equipment, testing them, and carrying out such redefinition and rewriting as may be required by the Customer in order to obtain the agreement of the Customer that the results meet the requirements of the Project;
- 4.7 where the Software is located on a Supplier's site, re-install the Software at the Customer's Site;
- 4.8 make all reasonable efforts to ensure that the System meets the needs of the Customer's business.

Depending upon the requirements of the Project, some of the above procedures may be performed by the Supplier in parallel with others.

5. CUSTOMER'S OBLIGATIONS

The Customer undertakes:

- 5.1 to pay for the System subject to the performance by the Supplier of its obligations;
- 5.2 to provide where applicable, adequate office accommodation and other facilities, including access to the applicable computer systems of the Customer, to enable the designated employees of the Supplier to carry out the Project;
- 5.3 to take all reasonable steps to ensure the health and safety of the Supplier's employees while they are working at Customer sites;
- 5.4 to comply with any additional Third Party Software conditions notified to it on or before delivery of any Third Party Software (including if so required the execution and return of a Third Party Software Licence);
- 5.5 to ensure that the operating system and any other software with which the Software will be used is either the property of the Customer or is legally licensed to the Customer, and to indemnify the Supplier in respect of any claims against the Supplier by third parties and all related costs, expenses or damages, in the event of any actual or alleged violations of third party proprietary rights or software licences;
- 5.6 to recognise that the Project is a joint endeavour between the parties;
- 5.7 to co-operate with the Supplier in defining the Project and in adopting the Supplier's methodology in producing the Software in order to facilitate timely completion of the Project;
- 5.8 to contain its expectations from the Project to technically feasible solutions as advised by the Supplier, having regard to the applicable Customer environment;
- 5.9 to create an appropriate test environment in order to satisfy itself that the System meets the needs of its business;



- 5.10 to take sole responsibility for determining that the System is ready for operational use in the Customer's business before it is so used;
- 5.11 to recognise that the Software is provided without warranty as to function or fitness for purpose because of the collaborative nature of the Project.

6. CHARGES

- 6.1 The work will be carried out on a time and materials basis and will be charged at the Supplier's rates set out in the Charges Schedule.
- 6.2 The Charges in this Agreement are exclusive of expenses reasonably incurred in the performance of this Agreement, including but not limited to travel to Customer sites when applicable, couriers, accommodation and any other expenses reasonably incurred by the Supplier in connection with this Agreement.
- 6.3 The Charges and all other prices, rates and expenses in this Agreement are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Customer and will be applied in accordance with UK legislation in force at the tax point date.
- 6.4 The Supplier will be entitled to increase its charges on the anniversary of the date of this Agreement and thereafter not more than once in any successive period of 12 months during this Agreement by giving not less than 60 days' notice to the Customer, provided that any such increase expressed as a percentage does not exceed the rate of the Supplier's salary inflation reported in its accounts for the immediately preceding year.

7. PAYMENT

- 7.1 Each invoice will be sent to the Customer by the Supplier before commencement of work. All invoices are payable 50% up front and 50% on delivery.
- 7.2 The Supplier will during the term of this Agreement and for at least the following 12 months keep accurate and up-to-date records of the time spent on the work. The Customer will by its authorised representative on reasonable notice be entitled at all reasonable times to inspect such records and to obtain copies of them.
- 7.3 The payment by the Customer of any invoices will not be deemed to be approval and/or acceptance by the Customer of any work or matter in respect of which such invoice is issued and will be without prejudice to the Customer's rights and remedies under this Agreement or at law or in equity in respect of any failure or delay on the part of the Supplier to perform its obligations.
- 7.4 Payments which are not received when payable will be considered overdue and remain payable by the Customer. Interest may be applied (at the discretion of the Supplier) for late payment from the date payable at the statutory rate applicable as well after as before any judgment, and independent of such judgment. This interest will accrue on a daily basis and be payable on demand.
- 7.5 Notwithstanding the above provision for late payment, in this event the Supplier may at its option, and without prejudice to any other remedy at any time after payment has become due, terminate or temporarily suspend performance of this Agreement.
- 7.6 If the Supplier becomes entitled to terminate this Agreement for any reason, any sums then due to the Supplier will immediately become payable in full.

8. PROGRESS REVIEW

- 8.1 The Supplier and the Customer will each nominate a Project Manager authorised to make and communicate decisions relating to the Project, who will be responsible for:



- (a) organising monthly Progress Meetings at which they will both review the progress of the Project and attempt to resolve any problems;
 - (b) providing all information reasonably required by the other for the performance of its obligations.
- 8.2 The Supplier's Project Manager will prepare a monthly progress report in writing and deliver it to the Customer's Project Manager in time for discussion at the Progress Meeting. This report will include a report on the progress of the Project together with other matters as the Customer's Project Manager may reasonably require.
- 8.3 The minutes of the Progress Meeting will be distributed within seven working days and signed before commencement of the business of the next Progress Meeting by both Project Managers.

9. INTELLECTUAL PROPERTY RIGHTS AND LICENCE

- 9.1 The Customer acknowledges that all proprietary rights in the Software, including but not limited to any title or ownership rights, patent rights, copyrights and trade secret rights, will at all times and for all purposes vest and remain vested in the Supplier.
- 9.2 The Supplier grants to the Customer a non-transferable, non-exclusive licence to use the Software ('Licence') for an indefinite term and for its own internal purposes, provided that:
 - (a) the Customer does not provide or otherwise make available the Software or any part or copies or any related documentation in any form to any third party; and
 - (b) the Customer does not transfer or assign this Licence without the Supplier's prior written consent.
- 9.3 The Customer hereby undertakes as a condition of this Licence not to copy, adapt, vary or modify the Software without the Supplier's prior written consent.

10. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 10.1 The Supplier, at its own expense, will defend or cause to be defended or, at its option, settle any claim or action brought against the Customer on the issue of infringement of any United Kingdom or Republic of Ireland intellectual property right by the Software ('Claim'). Subject to the other conditions of this clause, the Supplier will pay any final judgment entered against the Customer with respect to any Claim, and fully indemnify the Customer in respect of all costs and expenses relating to the Claim provided that the Customer:
 - (a) notifies the Supplier in writing of the Claim immediately on becoming aware of it;
 - (b) grants sole control of the defence of the Claim to the Supplier; and
 - (c) gives the Supplier complete and accurate information and full assistance to enable the Supplier to settle or defend the Claim.

The costs and fees of any separate legal representation for the Customer will be the Customer's sole responsibility.
- 10.2 If any part of the Software becomes the subject of any Claim or if a Court judgment is made that the Software does infringe, or if the use or licensing of any part of the Software is restricted, the Supplier at its option and expense may:
 - (a) obtain for the Customer the right to continue to use the Software; or
 - (b) replace or modify the Software so that any alleged or adjudged infringement is removed; or
 - (c) if the use of the Software is prevented by permanent injunction, accept its return and refund an amount equal to the sum paid by the Customer for the Software subject to straight line depreciation over a five-year period.

- 10.3 The Supplier will have no liability under this clause for:
- (a) any infringement arising from the combination of the Software with other software not supplied by the Supplier; or
 - (b) the modification of the Software unless the modification was made or approved expressly by the Supplier.
- 10.4 IN NO CIRCUMSTANCES WILL THE SUPPLIER BE LIABLE FOR ANY COSTS OR EXPENSES INCURRED BY THE CUSTOMER WITHOUT THE SUPPLIER'S PRIOR WRITTEN AUTHORISATION AND THE FOREGOING STATES THE ENTIRE REMEDY OF THE CUSTOMER IN RESPECT OF ANY INTELLECTUAL PROPERTY RIGHT INFRINGEMENT BY THE SOFTWARE.

11. CONFIDENTIALITY

The parties recognise that under this Agreement they may each receive trade secrets and confidential or proprietary information of the other party, including but not limited to commercial information, products, customers, business accounts, finance or contractual arrangements or other dealings, program source and object codes. All such information which is either marked 'Confidential' or stated at the time of disclosure and subsequently confirmed in writing to be confidential constitutes 'Confidential Information'. Each party agrees not to divulge Confidential Information received from the other to any of its employees 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.

12. SUPPLIER'S WARRANTIES

The Supplier warrants that:

- 12.1 it is either the sole and exclusive owner or an authorised licensee or user of all intellectual property rights and interests in the Software and that no third party has or is entitled to claim any intellectual property right or interest in any Software which is inconsistent with any undertakings of the Supplier made in this Agreement;
- 12.2 it has all the rights necessary to perform its obligations under this Agreement;
- 12.3 the Software will be developed in a skilled and professional manner by personnel who have adequate and relevant expertise and experience commensurate with their assigned roles;
- 12.4 the Supplier makes no representations and gives no warranties, guarantees or undertakings concerning its performance of the Services except as expressly set out in this Agreement. All other warranties, express or implied, by statute or otherwise, are excluded from this Agreement.

13. INDEMNITIES AND LIMITS OF LIABILITY

- 13.1 The Customer agrees that it has accepted these terms and conditions in the knowledge that the Supplier's liability is limited and that the Charges payable have been calculated accordingly. The Customer is advised to make its own insurance arrangements if it desires to limit further its exposure to risk or if it requires further or different cover.
- 13.2 The Supplier will indemnify the Customer for direct physical injury or death caused solely either by defects in the System or by the negligence of its employees acting within the course of their employment and the scope of their authority.
- 13.3 The Supplier will indemnify the Customer for direct damage to property caused solely either by defects in the System or by the negligence of its employees acting within the course of their employment and the scope of their authority. The total liability of the Supplier under this sub-clause will be limited to [£10,000] for any one event or series of connected events.



- 13.4 Except as expressly stated in this clause and elsewhere in this Agreement, any liability of the Supplier for breach of this Agreement will not exceed in the aggregate of damages, costs, fees and expenses capable of being awarded to the Customer the total price paid or due to be paid by the Customer under this Agreement.
- 13.5 Except as expressly stated in this Agreement, the Supplier disclaims all liability to the Customer in contract or in tort (including negligence or breach of statutory duty) in connection with the Supplier's performance of this Agreement or the Customer's use of the System and in no event will the Supplier be liable to the Customer for indirect or consequential damages or for loss of profits or arising from loss of data or unfitness for user purposes.

14. POST-IMPLEMENTATION SUPPORT

The Supplier recommends, or will provide if so requested by the Customer, a separate Support Agreement to cover future support of the System, at its then current charges for such support services.

15. TERMINATION

- 15.1 This Agreement may be terminated immediately by notice in writing:
- (a) by the Supplier if the Customer fails to pay any sums due under this Agreement by the due date notwithstanding any other provisions for late payment in this Agreement;
 - (b) by either party if the other party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the same (if capable of remedy) for a period of 30 days after written notice of the breach by the other party;
 - (c) by either party if the other party is involved in any legal proceedings concerning its solvency, or ceases trading, or commits an act of bankruptcy or is adjudicated bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of an amalgamation or reconstruction, or makes an arrangement with its creditors or petitions for an administration order or has a receiver or manager appointed over all or any part of its assets or generally becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or anything analogous to such event occurs in any applicable jurisdiction.
- 15.2 Any termination of this Agreement under this clause will be without prejudice to any other rights or remedies of either party under this Agreement or at law and will not affect any accrued rights or liabilities of either party at the date of termination.

16. GENERAL CONTRACT PROVISIONS

16.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement. Each of the parties acknowledges that in entering into this Agreement, it does not rely on and will have no remedy in respect of any statement of fact or opinion not recorded in this Agreement (whether negligently or innocently made), except for any representation made fraudulently.

16.2 Variations

No variation of these terms and conditions will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of this Agreement.

16.3 Severability

If any of the provisions of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced [unless the substantive purpose of this Agreement is thereby frustrated, in which case either party may terminate this Agreement forthwith on written notice].

16.4 Waiver

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

16.5 Rights of Third Parties

A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.

16.6 Assignment

Neither party will assign, sub-contract or otherwise deal with this Agreement or any rights and obligations under this Agreement without the prior consent of the other party.

16.7 Notices

Any notice given under this Agreement by either party to the other must be in writing and may be delivered personally or by first-class post, and in the case of post will be deemed to have been given two working days after the date of posting. Notices will be delivered or sent to the addresses of the parties on the first page of this Agreement or to any other address notified in writing by either party to the other for the purpose of receiving notices after the date of this Agreement.

16.8 Force Majeure

Neither party will be liable to the other party for any delay in or failure to perform its obligations (other than a payment of money) as a result of any cause beyond its reasonable control, including but not limited to any industrial dispute. If such delay or failure continues for at least 90 days, either party will be entitled to terminate the Agreement by notice in writing without further liability of either party arising directly as a result of such delay or failure.

16.9 Governing Law and Jurisdiction

This Agreement is governed by and construed according to English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.