

DYNAMIC DATA DESIGN LIMITED TERMS AND CONDITIONS

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1 DEFINITIONS

- 1.1 DDD shall mean Dynamic Data Design Limited.
- 1.2 The “**Services**” shall mean the goods, services, or any part thereof, to be supplied by DDD in accordance with these terms and conditions. Such Services shall include, but not be limited to, packaged software, custom software, software configuration, installation, development, support, training, maintenance, documentation, hardware and consultancy.
- 1.3 The “**Client**” shall mean the individual, company or other organisation to whom DDD may agree to supply Services in accordance with these terms and conditions.
- 1.4 The “**Proposal**” shall mean the document or letter, provided by DDD, outlining the details of the work to be undertaken.
- 1.5 “**Confidential Information**” shall mean information relating to the Client, his business or his method of business.
- 1.6 “**Software**” shall mean any compiled computer software application or program prepared and delivered by DDD in accordance with the Client’s request or specification.

2 SCOPE OF THE AGREEMENT

- 2.1 These terms and conditions together with the Proposal to which they are attached will form a binding contract between the Client and DDD. This shall constitute the entire understanding and agreement between the Client and DDD.
- 2.2 These terms apply to the exclusion of all other terms or conditions of contract the Client may propose and shall not be varied unless agreed in writing and signed by DDD.

3 DDD OBLIGATIONS AND RIGHTS

- 3.1 In consideration of the payment by the Client to DDD of the fees as set out in the Proposal, DDD agrees to provide to the Client the Services as described in the Proposal with reasonable and due care in accordance with, and subject to these terms.
- 3.2 DDD shall, both during this Agreement and after its termination, keep confidential and not (except as authorised or required for the purposes of this Agreement) use or disclose or attempt to use or disclose to any person any Confidential Information.
- 3.3 DDD may delegate the performance of all or part of the Services to a properly qualified person and may disclose to that person such Confidential Information as is reasonably necessary to enable the person properly to provide the Services delegated.

4 CLIENT OBLIGATIONS

- 4.1 The Client will co-operate with, and act in good faith towards DDD and provide, on request, such source materials or information as DDD may reasonably require in order to carry out its obligations hereunder.
- 4.2 The Client shall allow the DDD such access to the Client's data, premises, plant and equipment as DDD reasonably requires in order to fulfill its obligations under this Agreement.
- 4.3 The client shall notify DDD in writing of any changes or alterations required to the Services agreed. DDD shall be given the opportunity to consider said change proposals and will respond to the client in writing within 10 working days.

5 PAYMENT

- 5.1 DDD shall render invoices to the Client in respect of the prevailing schedule of fees as set out in the Proposal. These fees shall be payable by the Client within 30 days of the invoice date unless specified otherwise in the Proposal.
- 5.2 DDD shall be entitled to charge interest on any overdue payment at the rate of 8% over the Bank of England's base rate prevailing at the time, and such reasonable costs as it incurs in the collection of such overdue payments, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.3 The Client shall pay or reimburse to DDD (on production of such vouchers and/or other evidence as it may reasonably require) all reasonable and proper expenses incurred by DDD and/or the Consultant provided by DDD in connection with its/his/her provision of the Services.
- 5.4 DDD may charge additional fees in accordance with its then prevailing rates:
 - 5.4.1 in the event of delays or additional work caused or required by the Client, including its failure to provide DDD with such information, materials, instructions, media or approvals, as are reasonably required for the supply of the Services, properly and/or on time.
 - 5.4.2 in the event of changes to the cost of labour, materials, services and other circumstances outside of DDD's reasonable control.
 - 5.4.3 in the event that the Client requires the supply of Services in addition to those described in the Proposal.
- 5.5 If the Client requires any change or alteration to the Services provided, DDD and the Client shall, prior to such change being effective or implemented, agree:
 - 5.5.1 the nature of the change
 - 5.5.2 the procedures for implementation of such change
 - 5.5.3 the variation to the Fees
- 5.6 Until any change is formally agreed between the Client and DDD, DDD will continue to perform and be paid for the Services as if the change had not been proposed, unless otherwise requested by the Client.
- 5.7 All and any changes to the works shall be reflected and accompanied by appropriate amendments to the proposal and fees.

6 INTELLECTUAL PROPERTY RIGHTS / CONFIDENTIALITY

- 6.1 All copyright, design rights, registered designs, trade marks, patents, database rights, confidential information, ideas, know-how and all other rights whatsoever of a like nature worldwide, whether registered or not, of whatever nature in material, devised, created or commissioned by DDD, in supplying Services shall remain the property of DDD, unless otherwise agreed, specified in writing and signed by both parties.

- 6.2 Intellectual Property that is brought to the project by either party remains the property of the originator unless otherwise agreed, specified in writing and signed by both parties.
- 6.3 In consideration of, and upon payment of the fees in full, the Client shall have the Rights of Use set out in the Proposal which shall take effect on receipt by DDD of the fees. Where no such rights are specified, the client is granted a non-exclusive licence to use the Services for the purpose described in the Proposal or other associated documentation. Rights of Use shall be extended only with the consent of DDD, and payment of agreed fees.
- 6.4 The Client shall not modify, adapt, translate, decompile, reverse engineer or attempt to ascertain by any other means the intellectual property owned by DDD, except with the prior written consent of DDD or as otherwise permitted by law where all modifications, adaptations and translations shall belong to, and vest in, DDD unless otherwise agreed and specified in writing in the Proposal.
- 6.5 DDD reserves the right to re-use specific intellectual property as developed for a Client, in the delivery of Services for itself or for other customers except where Client confidential or proprietary information may be disclosed.

7 INSPECTION AND ACCEPTANCE

- 7.1 If the Services delivered do not comply with the Proposal, or are defective in content or operation, DDD's liability shall be limited to correcting such defects within a reasonable time.
- 7.2 The Client shall only be entitled to reject the Service delivered because of non-compliance with the Proposal or defects in operation. If not rejected in writing within 30 days of delivery then the Client shall be deemed to have accepted the Service. Rejection without good reason shall be deemed a breach of these terms.
- 7.3 The Client shall inspect the Software regularly, and shall inform DDD immediately if it wishes to reject any part of the Software because of non-compliance with the Proposal, or other defects.

8 LIABILITY AND WARRANTY

- 8.1 DDD shall not be liable to the Client for any loss or damage whatsoever or howsoever caused, arising directly or indirectly in connection with this Agreement except to the extent to which it is unlawful to exclude such liability.
- 8.2 Notwithstanding the generality of the previous clause DDD expressly excludes liability for consequential loss, damage, or corruption to any website other software or data, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 8.3 In the event that any exclusion contained in this Agreement shall be held to be invalid for any reason and DDD becomes liable for loss or damage that it may otherwise have been lawful to limit, such liability shall be limited to the cost of the Services.
- 8.4 When instructions or advice are given or received orally by DDD, it shall have no liability to the Client for any misunderstanding or misrepresentation which may arise in relation thereto, except in relation to fraudulent misrepresentations.

9 LEGISLATION

- 9.1 The Client shall comply with all applicable rules, regulations, codes of practice and laws relating to its' use of the works, including without limitation, its obligations under the Data Protection Act 1998; Regulation of Investigatory Powers Act 2000, Competition Act 1998 and E-commerce Directive and equivalent legislation.

10 THIRD PARTY MATERIALS

- 10.1 DDD gives no warranty, representation or undertaking in relation to any third party materials or works.
- 10.2 Prior to any selection, use or reproduction by the Client of the Software, DDD shall, on reasonable request, provide the Client with copies and evidence of such rights, clearances, permissions and licences as shall be necessary for the use of the Software by the Client.

11 RISK AND TITLE

- 11.1 Risk in any reports or information delivered to the Client will pass to the Client on dispatch, and, until payment in full has been received in cleared funds by DDD in respect of the Services delivered, title in any physical products delivered to the Client shall remain with DDD.
- 11.2 The Client shall take out such insurance as shall be prudent, against all risks usually incurred in respect of the Software whilst in its possession or control.

12 TERMINATION

- 12.1 DDD shall be entitled to immediately restrict, suspend or terminate the works and the Client's use of any Software, and, or terminate this agreement upon the Client's material breach of this agreement (including without limitation the non-payment of any sum as and when due) unless the Client remedies such breach within 14 days of its occurrence.
- 12.2 DDD will not be liable in any amount, for failure to perform any obligation under this agreement if such failure is caused by the occurrence of any unforeseen contingency beyond the reasonable control of DDD, including without limitation internet outages, communications outages, fire, flood, war, terrorism or act of God.
- 12.3 The Client may not unilaterally cancel its order for Services or otherwise terminate this agreement (except for material breach by DDD of a fundamental term of this agreement) at any time without full payment of the fees.

13 GENERAL

- 13.1 Nothing in this agreement shall be deemed to constitute a partnership or agency relationship between the parties and neither of the parties shall do or suffer to be done, anything whereby it may be represented as a partner or agent of the other party.
- 13.2 During the course of this agreement, and for a period of 12 months afterwards, the Client shall not solicit the staff of DDD, or entice them to transfer their employment or services.
- 13.3 If any part of this agreement is - or becomes - unenforceable, such part will, at DDD's option, be construed as far as possible to reflect the parties' intentions, and the remainder of the provisions will remain in full force and effect.
- 13.4 No forbearance, delay or indulgence by either party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party, nor shall any waiver of rights operate as a waiver of any subsequent breach of this agreement.
- 13.5 The Client shall not assign the benefit or burden of this agreement without the prior written consent of DDD.
- 13.6 The UK shall be considered the place of first publication of any material on the internet.
- 13.7 No person who is not a party to this agreement shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 13.8 These terms are made in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.