

## TERMS & CONDITIONS OF BUSINESS

### 1. Definitions

In these terms and conditions ("Conditions"):-

- "the Acceptance" means the letter or e-mail of acceptance issued by the Company to the Client agreeing to provide the Services;
- "the Client" means the person, firm or company engaging the Company to provide the Services;
- "the Company" means w3dL Limited a company registered in England under number 11294896 whose registered office is situated at Suite 6, Williamson House Wotton Road, Ashford, Kent, TN23 6LW, United Kingdom
- "the Fee" means the fee set out in the Acceptance payable by the Client to the Company in connection with the provision of the Services;
- "Project Materials" means any and all works of authorship and materials developed, written or prepared by the Company, its employees, agents or sub-contractors (whether individually, collectively or jointly with the Client and on whatever media) including, without limitation, any and all reports, studies, data, diagrams, charts, specifications, pre-contractual and contractual documents and all drafts thereof and working papers relating thereto, but excluding ordinary correspondence passing between the Company and the Client;
- "the Services" means the services to be provided by the Company to the Client as more particularly detailed in the Acceptance.

### 2. Provision of the Services

- 2.1 The Client engages the Company to provide and the Company agrees to provide the Services in accordance with the Acceptance. No variation of these Conditions or the Acceptance shall be binding unless agreed in writing between the Company and the Client.
- 2.2 The Company shall at all times diligently perform its duties and exercise such powers consistent with them which are from time to time necessary in connection with the provision of the Services. The Company shall procure that its employees, agents or subcontractors providing the Services shall perform their obligations with reasonable care and skill and to the best of their ability.
- 2.3 All time scales given by the Company for the provision of the Services are given in good faith but are estimates only and the Company shall not be liable for any delay in connection therewith.

### 3. Client's obligations

3.1 The Client shall:

- 2.1.1 3.1.1 ensure that its employees and any sub-contractors co-operate fully with the Company in relation to the provision of the Services and that they are qualified to carry out any tasks which they may be assigned in connection with the Services;
- 2.1.2 3.1.2 promptly furnish the Company with all information and documents it may require for the proper performance of its obligations hereunder;
- 2.1.3 3.1.3 obtain all third party consents and licences required to enable the Company to perform the Services;
- 2.1.4 3.1.4 put in place adequate security and virus checking procedures in relation to any computer facilities to which it provides the Company with access; and
- 2.1.5 3.1.5 make available to the Company such office, computer and secretarial services as may be required in relation to the provision of the Services.

3.2 The Company will not be responsible for any delay, cost increase or other consequences arising from the Client's failure to perform all or any of its obligations hereunder and the Client shall reimburse the Company for any costs or expenses incurred by it as a result of such failure.

3.3 The Client shall be responsible for ensuring the accuracy and completeness of all information supplied by it to the Company and for checking and approving the use of Project Materials. The Client shall fully and effectively indemnify the Company from and against all or any liability which the Company may suffer as a result of any claims or proceedings, which may be brought or threatened against the Company in connection with the use of information supplied by the Client and /or the use of Project Materials that have been approved by the Client.

### 4. Ownership of Project Materials

4.1 Subject to :

- 4.1.1 any pre-existing intellectual property rights of the Client;
- 4.1.2 any third party licensors in respect of any pre-existing materials or materials supplied under open source licensing which are supplied in conjunction with the Project Materials (which rights and licenses shall remain unaffected),

the Company shall be entitled to all property, copyright and other intellectual property rights in the Project Materials, which property, copyright and other intellectual property rights the Company hereby, licenses to the Client.

4.2 The Company reserves the right to use in any way it sees fit any programming tools, skills and techniques acquired or used by it in the performance of the Services.

### 5. Acceptance of Project Materials

5.1 All Project Materials shall be deemed to have been accepted by the Client if no issues concerning their quality and/or contents have been raised by the Client within 5 working days of their delivery by the Company. The Client shall not in any event unreasonably withhold or delay its acceptance. Completion of the provision of the Services shall occur when all Project Materials which are subject to acceptance by the Client have been accepted or deemed to have been accepted ("Completion").

### 6. Invoicing and payment

6.1 Upon issuing an Acceptance the Company shall render an interim invoice to the Client for 50% of the Fee and a final invoice for the balance of the Fee at any time after Completion.

6.2 Notwithstanding the provisions of clause 6.1 the Company may in its absolute discretion render interim invoices in respect of the Fee.

6.3 VAT shall be charged by the Company on all invoices rendered to the Client unless the Client is able to produce to the Company up to date written confirmation from HM Revenue & Customs that VAT need not be charged. Where such evidence is produced and VAT is not charged by the Company, the Client shall fully and effectively indemnify the Company in respect of any VAT that HMRC may subsequently determine should have been charged in connection with the provision of the Services and all or any penalties or fines imposed on the Company by HMRC for not making a charge for VAT.

6.4 Any queries concerning any invoice rendered by the Company must be brought to the Company's attention within 7 days of the date of invoice otherwise the Client shall be deemed to agree the invoice.

6.5 The Client shall discharge all Company invoices (whether interim or final) within 30 days of the date of invoice. All payments made by the Client to the Company shall be made without any deductions or set off whatsoever.

6.6 In respect of all unpaid invoices the Company shall be permitted to charge interest at the rate of 4 % above the base rate from time to time of the Company's bank on all or any amount outstanding until payment is received in full (whether before or after any judgement).

6.7 Where any invoice remains unpaid (and without prejudice to any other rights that the Company may have whether under the terms of these Conditions or otherwise) the Company shall be entitled to suspend any further provision of the Services until payment in full is received.

6.8 In addition to the Fee, the Company shall be reimbursed for all expenses incurred by it in connection with providing the Services. The scope of the expenses shall be agreed in advance by the Client and the Company.

## 7. Confidentiality

The Company and the Client shall not disclose or divulge any information which they receive or obtain relating to the other's business, finances, trade secrets, technology or any other information of a confidential nature. The obligations of confidentiality shall not apply to any information which is in the possession of and is at the free disposal of the Company or is in the public domain prior to its receipt by the Company from the Client or is or becomes publicly available on a non-confidential basis through no fault of the Company.

## 8. Liability

8.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the provision of the Services and in any event the entire liability of the Company shall not exceed the amount of the Fee except as expressly provided in these Conditions.

8.2 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 9. Termination

9.1 The Company may by written notice terminate the provision of the Services forthwith upon the happening of any of the following events:-

2.1.1 9.1.1 if the Client commits a breach of any of these Conditions and fails to make good any such breach within 14 days of being required to do so by written notice identifying the breach and steps which must be taken to remedy it; or

2.1.2 9.1.2 if the Client enters into or proposes a voluntary arrangement with its creditors or reconstruction of its debts or if its directors make a declaration of solvency for the purpose of a members' voluntary winding up, or if notice is given of a creditors' meeting in connection with a creditors' winding up, or if a special resolution is passed that the company be wound up by the court, or if an administrative or other receiver is appointed, or if the court makes an administration order or order that the company be wound up by the court, or if the company ceases to carry on its business or is unable to pay its debts within the meaning of the Insolvency Act 1986 Section 123.

9.2 Upon termination of the provision of the Services in accordance with clause 9.1 the Company shall be entitled forthwith to render an invoice to the Client in respect of all work completed by the Company in connection with the provision of the Services up to and including the date of termination and all expenses incurred by the Company on behalf of the Client to that date. Such invoice shall be paid in full by the Client forthwith and in any event within 7 days of date of the invoice.

9.3 Termination for whatever reason shall not affect the accrued rights of the parties arising in any way out of these Conditions as at the date of termination and the provisions of clauses 4,7,11 and 12 shall survive termination and remain in full force and effect.

## 10. Force majeure

10.1 Neither the Company nor the Client shall be liable for any delay in performing their obligations if such delay is caused by circumstances beyond their reasonable control (including without limitation any delay caused by any act or omission of the other party).

10.2 Subject to the party whose performance is unavoidably delayed ("the affected party") giving prompt notice to the other party of the reasons for the delay and its likely duration, the affected party's performance of its obligations shall be suspended for the period that the circumstances causing the delay persist ("the period of delay") and the affected party shall be granted an extension of time for performance equal to the period of the delay.

10.3 Both parties will use all reasonable endeavours to mitigate the impact of any period of delay and to recommence performance of their obligations as soon as reasonably possible.

10.4 Any costs arising from any period of delay shall be borne by the affected party and either party may, if such delay continues for more than 5 weeks, terminate the provision of the Services forthwith on giving notice in writing to the other in which event neither party shall be liable to the other by reason of such termination save that the Client shall pay the Company a reasonable sum in respect of any work carried out by it prior to such termination and for that purpose the Company may deduct such sum from any amounts previously paid by the Client (the balance (if any) of which shall be refunded to the Client whether paid by way of a deposit or otherwise).

## 11. Restriction

11.1 The Company and the Client agree that neither shall at any time during the provision of the Services or for a period of 12 months commencing on the date of Completion or termination of the provision of the Services (as the case may be) without the written consent of the other, solicit on behalf of themselves or any other person or organisation, any employee employed or engaged by the other party (whether on a temporary basis or otherwise) and who has been associated or connected with the provision of the Services.

## 12. General

12.1 Any notice or communication required to be given pursuant to these Conditions shall be sent by first class recorded delivery, facsimile transmission or e-mail and shall be deemed to have been received by the addressee within 2 working days of posting or sending as the case may be.

12.2 Each clause in these Conditions shall be construed separately and notwithstanding that the whole or any part of any clause may prove to be illegal or unenforceable the other clauses in these Conditions and the remainder of the clause in question shall continue in full force and effect.

12.3 The Contracts (Rights of Third parties) Act 1999 shall not apply to these Conditions

12.4 These Conditions shall be governed by English law and any dispute arising out of any act to which these Conditions apply shall be subject to the exclusive jurisdiction of the English Courts.