

AD-HOC CONSULTANCY & SUPPORT SERVICES

Time and Materials Terms & Conditions

1. AGREEMENT

1.1 This Agreement comprises the standard Bournemouth Digital Terms & Conditions.

2. SERVICES

2.1 The Services are those described in the Quotation which had this attached.

2.2 Bournemouth Digital will charge for additionally requested Services either via the Bournemouth Digital Change Control Process or via a separate Contract.

2.3 The Client will provide such reasonable access to the Clients' premises as are required to provide the Services successfully.

2.4 The Client will provide reasonable access to such administrative facilities as are required to carry out the Agreement successfully. (This will include, but is not limited to, a suitable place to work, telephone and teleconferencing and internet access.)

2.5 The Client will provide a fully supported technical environment in which to carry out any work which is not scheduled to be undertaken on Bournemouth Digital's equipment.

3. LIMITATIONS

3.1 The Service will be provided between 9:00 am and 5:30 pm from Monday to Friday, excluding Bank and Public Holidays in England, unless by prior agreement. Time agreed outside these hours will be charged at time and a half except at weekends and Bank and Public Holidays in England which will be charged at double time.

3.2 The working day is defined as seven and one half (7½) hours.

3.3 Bournemouth Digital will have access to its staff for the purposes of training, staff meetings and welfare.

3.4 Holidays taken during the assignment will be those usually applicable to Bournemouth Digital staff. The Client will not unreasonably withhold agreement to such holiday.

3.5 Bournemouth Digital shall not be liable to the Client or any person for any loss or damage whatsoever or however caused arising directly or indirectly in connection with this agreement or the Service carried out hereunder other than as imposed by Law. Provided however that subject to sub Clause 3.6 below nothing contained in this Clause or this Agreement shall limit Bournemouth Digital's liability for any claim arising from or in connection with Bournemouth Digital's wilful misconduct or wilful failure to act, or property damage arising out of the negligence of Bournemouth Digital or its employees, agents or subcontractors in performance of the Service pursuant to this Agreement.

3.6 Bournemouth Digital expressly excludes liability for direct, indirect or consequential loss or damage including but not limited to loss or damage to data or to other equipment or property whether or not the same may be in Bournemouth Digital's care, custody or control; or for loss of profit, business revenue, goodwill or anticipated savings.

3.7 In the event that any exclusion or other provision contained in this Agreement be held to be invalid for any reason and Bournemouth Digital become liable for loss or damage that could otherwise have been limited, such liability shall be limited to either:

- a) GB £250,000,
- b) the contract value at the time the liability was first notified whichever is the lower. Bournemouth Digital will not be liable for any such claims below GB £250.

3.8 Each Party shall indemnify, hold harmless and defend the other Party from and against any liabilities, claims, demands, proceedings, damages, arising directly or indirectly out of or as a consequence of (1) his death, illness or injury or death or illness of or injury to its employee, servant or agent or (2) loss of or damage to any of its equipment or property, howsoever caused including the negligence or breach of statutory duty by the other Party. Consequently, in respect of such death, illness, injury, loss or damage, each party waives any right of recourse against the other Party.

4. CHARGES

4.1 All charges referred to in this Agreement are exclusive of any taxes, duties or such additional

sums including but not limited to Value Added Tax, excise tax, tax on sales, property or use, import or other duties whether levied in respect of this Agreement or otherwise.

4.2 The Services will be invoiced on agreed dates as per the Quote from which you accessed these terms.

4.3 Materials will be charged to the Client where agreed in advance.

4.4 Payment must be made within 15 days of a tax invoice. If such payment is not received by Bournemouth Digital the Service may be withdrawn, the contract may be terminated or both. We will exercise our statutory right to claim interest (at 8% over the Bank of England base rate) and compensation for debt recovery costs under the Late Payment legislation if we are not paid according to our agreed credit terms.

4.5 Fee rates may be revised at 30 days' notice no more than twice per calendar year.

4.6 Reasonable expenses shall be charged at cost, monthly in arrears and will be reimbursed by the Client within 30 days of a related invoice.

4.7 Travel time other than travel to the normal place of work during the working day may be chargeable at the agreed work rates.

4.8 Where the Client wishes to cancel booked work by a Bournemouth Digital resource on a scheduled day, the time may be charged as if worked unless Bournemouth Digital is able to schedule work of equivalent value. Where work of lower value can be found Bournemouth Digital may, at its discretion, charge the Client only with the difference in value of the work.

5. STANDARDS

5.1 Bournemouth Digital staff will apply Bournemouth Digital's Procedures and Standards unless directed otherwise in writing by the Client.

5.2 The Client shall nominate a manager to whom the Bournemouth Digital staff are responsible and who will sign promptly such project reports as are presented by the Bournemouth Digital staff detailing such progress information as is agreed.

6. PROPERTY AND RIGHTS

6.1 All Intellectual Property Rights arising from Services provided by Bournemouth Digital staff will remain the property of Bournemouth Digital.

6.2 Bournemouth Digital retains the copyrights, design rights and any similar Intellectual Property Rights in the Services, code, documentation and work undertaken as and when such copyrights, design rights or other rights come into existence.

6.3 Bournemouth Digital licences the client to use any delivered products of the service free of charge.

6.4 Ownership in the licences shall not pass to the Client until all sums pertaining to the deliverables and due to Bournemouth Digital have been received by Bournemouth Digital. In the event of non or part payment of all such sums due, Bournemouth Digital shall have the right to enter the Clients premises and take possession of such goods.

6.5 Bournemouth Digital indemnifies the Client against claims by third parties that work delivered infringes the Intellectual Property Rights or copyright of that third party provided that:

- a) the Client promptly notifies Bournemouth Digital in writing of any claim,
- b) the Client makes no admissions without the agreement of Bournemouth Digital,
- c) the Client, at Bournemouth Digital's request and expense, shall allow Bournemouth Digital to conduct and/or settle all negotiations and litigation and shall give Bournemouth Digital all reasonable assistance.

This indemnity does not extend to claims arising from specifications or other material provided by the Client and included in the Services at the Clients' request.

6.6 The Client will exercise all reasonable care to safeguard Bournemouth Digital property, personal property and the results of the Services.

6.7 The content and results of all work undertaken by both Bournemouth Digital and the Client are to be kept confidential by the other party except by prior written agreement unless the information is:

- a) published or comes into the public domain other than by breach of this Agreement, or
- b) lawfully known before commencement of this Agreement and is not the subject of a previous obligation of confidentiality, or
- c) lawfully obtained from a third party which is free to divulge the information, or
- d) replicated by work carried out independently by or for the other party by an employee or other person with no access to or knowledge of such information.

6.8 Bournemouth Digital shall ensure that no publicity relating to the Services shall take place without prior written agreement of the Client.

7. CHANGE CONTROL

7.1 The Client and Bournemouth Digital may agree that a Change Control process will be used to agree, in advance, changes to the Services.

7.2 All requests for change will be notified in writing by the Client Manager (The Change Control process). Where a change has been requested via a mechanism other than the Change Control process the issue will be referred to the Client Manager. Bournemouth Digital will take no further action unless the request is formally submitted.

7.3 No changes shall be applied to the project until the appropriate Change Control documentation has been authorised by both parties.

7.4 Bournemouth Digital will quantify the impact of a change request at its discretion and will identify the likely effect on target and actual costs, timescales and such other effects as are obvious at the time.

7.5 Where significant time is needed to quantify the impact of a request for change then the request may, at Bournemouth Digital discretion, be treated as a pair of requests:

- a) the first to authorise the estimation process and produce the information needed for b) below,
- b) the primary request itself.

Neither party is bound to authorise request (b) once request (a) is complete.

7.6 Where Bournemouth Digital undertakes impact analysis of a series of small change requests such that the total impact analysis time is in excess of half a man day then Bournemouth Digital may, at its discretion, reclaim this time through a change request which the Client must sign.

7.7 If, due to any change in the cost of products, labour, material or other costs from that prevailing at the date of the proposal, the cost to Bournemouth Digital of fulfilling its obligations is changed then this change may be passed on to the Client via the Change Control Process.

8. GENERAL

8.1 Bournemouth Digital may at any time sub-contract either in whole or in part its obligations hereunder with the written agreement of the Client, such agreement not to be unreasonably withheld.

8.2 This Agreement may not be assigned by either party without prior written agreement of both parties, such agreement not to be unreasonably withheld.

8.3 Bournemouth Digital shall not be liable for any reasonable delays in meeting any of its obligations under this Agreement which were due to causes beyond its reasonable control, including but not limited to acts of God, perils of the sea or air, fire flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; inability to provide support or supply materials; breakdown of equipment; any strike, lock-out or other form of industrial action, whether between either of the parties hereto and any or all of its employees and/or other employer and any or all of its employees and/or between any two or more groups of employees (and whether of either of the parties hereto or any other employer).

8.4 Bournemouth Digital shall not be liable for any reasonable delays in meeting any of its obligations under this Agreement which were caused by the Client, including but not limited to delay in providing information within agreed timescales, late sign-offs, provision of inaccurate information or data, provision of unsuitable work places or inadequate administrative facilities. Such delays will be notified through the Change Control Process.

8.5 Where such delays caused by the Client cause a break in the schedule of work by Bournemouth Digital resources the time may be charged as if worked (at prevailing standard Time & Materials rates) unless Bournemouth Digital is able to schedule work of equivalent value. Where work of lower value can be found, Bournemouth Digital may, at its discretion, charge the Client only with the difference in value of the work.

8.6 The Agreement shall be governed by English Law and each party hereby submits to the exclusive jurisdiction of the English Courts.

8.7 Any notice hereunder shall be sent by Recorded Delivery to the address appearing in this Agreement or such other address as each party may from time to time have communicated to the other in writing and any such notice shall be deemed to have been served on the expiry of the 48 hours after posting.

8.8 Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be

construed nor shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's rights to take subsequent action.

8.9 During the term of this Agreement and for a period of 6 months from (a) its expiry or termination or (b) if later, the last day of provision of the relevant Services, the Client will not directly or indirectly solicit the employment of or engagement of Services by any person employed by or acting on behalf of Bournemouth Digital in relation to the Services. If the Customer is in breach of this condition then, in recognition that Bournemouth Digital will suffer substantial damage, the Client will pay Bournemouth Digital by way of liquidated damages and not by way of penalty a sum equal to the current annual salary of the employee concerned.

8.10 Should designated personnel at any time by death, illness, accident, resignation or other reasonable cause be prevented from maintaining the Services, Bournemouth Digital will endeavour to replace them with staff of equivalent calibre and expertise.

8.11 These Terms & Conditions shall constitute the entire understanding between the parties and except as provided herein, no addition, amendment or modification to these Terms & Conditions shall be effective unless it is in writing and signed or accepted by either the Software Development Manager or a Director of Bournemouth Digital.

8.12 Both the Company and the Consultants agree that the Consultants will act as independent contractors in the performance of their duties under this agreement.

9. TERM AND TERMINATION

9.1 Subject to Clauses 4.5, 9.2 and 9.3 this Agreement shall remain in force and effect until the Service is complete.

9.2 Notwithstanding any provisions herein contained this Agreement may be terminated with 10 days written notice from the party not at fault if any of the following events shall occur:

9.2.1 If the other party shall present a petition or have a petition presented by a creditor for its winding up or shall enter into any liquidation (other than for the purpose of reconstitution or amalgamation); or shall have a receiver, or administrative receiver of all or any part of its undertaking or assets appointed, or shall be deemed

by virtue of Section 518 of the Companies Act 1985 (as updated in the Companies Act 2006) to be unable to pay its debts or shall cease or threaten to cease or carry on business.

9.2.2 If the other party shall at any time be in material default of this agreement or shall fail to remedy such material default within 30 days from receipt of notice in writing from the other party specifying such material default.

9.3 Either party may terminate the contract at 30 days written notice.

9.4 Termination, however and whenever occasioned shall be subject to any rights and remedies the parties may have under this Agreement or in English law.

10. ARBITRATION

10.1 This agreement shall be governed by and subject to the English law. All dispute arising in connection with this agreement which might not be amicably resolved, shall finally be settled by the Commercial Court of London.