

**TERMS & CONDITIONS**

**FOR THE PROVISION OF PRODUCTS & SERVICES BY**

**REALLY USEFUL DIGITAL MEDIA LIMITED**

All contracts for the supply of goods and/or the provision of services made by or on behalf of Really Useful Digital Media Limited (RUDM) are subject to the terms and conditions contained within this document.

## 1. Definitions and Interpretation

### 1.1. In these Conditions: -

<b>Conditions</b>	means these terms and conditions including any special terms and conditions agreed in writing between the Customer and the Company;
<b>Payment Schedule</b>	means the schedule for payment of the Price and any other charges as set out in the Proposal;
<b>Company</b>	means Really Useful Digital Media Limited (Company Registration Number: 5754035) whose registered office is at Office One, Floor One Maxwell House, Liverpool Innovation Park, Liverpool, England, L7 9NJ
<b>Content</b>	means all work undertaken, advice, copy, designs, graphics, logos, icons and text included by way of visual representations in any product of the Services;
<b>Contract</b>	means the contract for the supply of the Software and/or the provision of the Services incorporating the Conditions and the terms of any Proposal;
<b>Customer</b>	means any individual, firm or company who agrees to acquire the Software and/or Services from the Company in accordance with the terms of the Contract;
<b>Intellectual Property</b>	means any copyright, moral rights, database right, unregistered design rights, registered designs, trade marks (whether registered or not), patents, know how, trade names and rights of confidentiality or any similar rights whether arising in the UK or elsewhere in the world and including any applications for any of the foregoing anywhere in the world;
<b>Price</b>	means the price of the Software and/or the charge for the Services stated exclusive of VAT in the Proposal;
<b>Project</b>	means the project to be undertaken by the Company (with or without collaboration by the Customer) as detailed in the Proposal;
<b>Project Manager</b>	means the individual appointed by the Customer to liaise with the Company in relation to the Project;
<b>Proposal</b>	means the proposal outlining the Software and/or Services issued by the Company and

accepted by the Customer detailing Price, times of delivery or performance dates to which the Conditions are annexed, and such alterations or changes thereto as may from time to time be agreed in writing between the parties;

**Recurrent Charge** means the recurring charge (if any) for Services stated in the Proposal as may be varied in accordance with the Conditions;

**Services** means all services supplied by the Company to the Customer under the terms of the Contract;

**Software** means the third party software (if any) provided by the Company as part of the Project;

**VAT** means value added tax chargeable under English law for the time being and any similar additional or replacement tax

1.2. The headings in these Conditions are for convenience only and shall not affect the interpretation of these Conditions.

1.3. Words in the singular shall include the plural and vice versa.

1.4. Any obligation in these Conditions on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## 2. **The Contract**

2.1 The Proposal constitutes an offer by the Company to supply the Software and/or provide the Services subject to these Conditions.

2.2 These Conditions shall apply and be incorporated into the Contract to the exclusion of any other terms and conditions including the standard conditions of the Customer, trade, custom, practice or course of dealings.

## 3. **Working Procedures**

3.1. The Company will provide the Software and/or Services to the Customer in return for payment in accordance with clause 5.

3.2. The Customer shall appoint a project manager who shall give all reasonable assistance (including but not limited to time, materials, working space and access to personnel and systems) required by the Company in order to complete the Project.

#### 4. **Confidentiality**

- 4.1 The Company shall treat as secret and confidential and not at anytime for any reason disclose or permit to be disclosed to any person (other than its professional advisors) or otherwise make use of or permit to be made use of any information clearly labelled by the Customer as being confidential and disclosed to the Company during the performance of the Contract except insofar as:
- 4.1.1 Such information is in or comes into the public domain or is already in the possession of the Company;
- 4.1.2 Such disclosure is to any third party supplier or sub-contractor of the Company and in such event is disclosed to such extent only as is necessary for the performance of the Company's obligations under the Contract; or such disclosure may be required by law.
- 4.2 The Customer 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 Customer by the Company, its employees, agents or sub-contractors and any other confidential information concerning the Company's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purposes of discharging the Customer's obligations to the Company, and shall ensure that such employees, agents or sub-contractors are subject to obligation to confidentiality corresponding to those which bind the Customer.
- 4.3 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisations.
- 4.4 This condition 4 shall survive termination of the Contract, howsoever arising.

#### 5. **Payment**

- 5.1 The Company operates an interim payment scheme, whereby half of the total balance is payable on confirmation of commencement of the project and the balance upon final completion and delivery of the Project as set out in the Payment Schedule, subject to any variations detailed in the Proposal.
- 5.2 In consideration of the provision of the Software and/or Services, the Customer shall pay to the Company the Price and the Recurrent Charge (if any).
- 5.3 The Company reserves the right to increase the Price to take account of any increase in the costs of materials or labour or any other matter having an effect on costs and arising out of alterations, or

amendments proposed by the Customer after acceptance of the Proposal, or as the result of any other circumstances beyond the Company's reasonable control.

- 5.4. The Company will use its reasonable endeavours to keep the Customer informed of expenditure applicable to the Price and will inform the Customer of any changes to the Price arising or likely to arise out of alterations or amendments to the Proposal.
- 5.5. The Price has been prepared on the basis of project continuity being maintained. The Company reserves the right to increase the Price to take account of any additional costs relating to delays requested or caused by the Customer.
- 5.6. All work produced or services rendered by the Company at the Customer's request, whether experimental, preliminary or otherwise, will be charged for, unless otherwise agreed in writing.
- 5.7. In addition to the Price, the Company reserves the right to charge the Customer for expenses reasonably incurred in fulfilment of the Contract including but not limited to travel costs, hotel accommodation and courier services.
- 5.8. Any additional costs and expenses incurred under Condition 5.6 may be charged at the time they are incurred or on completion of the Contract.
- 5.9. The Company shall issue an invoice to the Customer for the Price and any other charges payable under the Contract in accordance with the Payment Schedule (hereafter "the Invoice"). Payment will be made in full without withholding deduction or set-off in pounds sterling within twenty-eight (28) days of the date of the Invoice, unless otherwise agreed in the Proposal.
- 5.10. The Company shall be entitled to invoice the Customer in respect of the Recurrent Charge (if any) quarterly in advance in accordance with the terms of the Proposal and, unless otherwise stated on the Company's invoice, payment is due in full in pounds sterling within twenty-eight (28) days of the date of invoice.
- 5.11. Time for payment is of the essence. Interest shall accrue from day to day, both after as well as before any judgement, and be payable on sums more than 7 days overdue from the date upon which payment was due until actual payment at the rate of 4% per annum above the base rate of Barclays Bank plc from time to time in force. Such interest shall be payable on demand.

## 6. **Services**

- 6.1. Services are provided in accordance with the provisions of the Proposal, if applicable.
- 6.2. The Company will use reasonable endeavours to meet relevant response times, but shall not be liable for any direct, indirect or consequential losses arising from the Company's failure to meet them.

## **7 Limitation of Liability**

- 7.1 Any property of the Customer from time to time in the possession of the Company shall be at the Customer's risk and the Company shall have no liability whatsoever in respect of any loss or damage to the same.
- 7.2 The Company shall be liable to the Customer in respect of any claim for death or personal injury or damage to or loss of any property of the Customer in so far as such is attributable to the negligence of the Company or to any breach of its contractual obligations.
- 7.3 The Company shall not be liable to the Customer for loss of profits or contracts, loss of goodwill or other indirect or consequential loss whether arising from negligence, breach of contract or otherwise howsoever.
- 7.4 The Customer acknowledges that all Software is subject to the third party licence terms provided by the Company and the Company shall have no liability in relation to the Software.
- 7.5 The Company gives no representation or warranty in relation to the services other than that they are provided using all reasonable skill and care. Accordingly the Customer acknowledges that it has no expectation of success and that any projected results occurring from the implementation of the Services or the Software are non-binding estimates.
- 7.6 Subject to clauses 7.1, 7.3 and 7.5 and except in relation to claims under clause 7.2 above the entire liability of the Company to the Customer for any claim of breach of contract, negligence or of any other nature shall be limited to the value of that part of the Price paid to the Company at the time that the claim is made.

## **8. Company Rights**

- 8.1 The Company reserves the right to withdraw any Service or withhold the provision of any Software in the event that any element of the Price (whether in relation to the Service or Software in question or not) remains unpaid.

## **9. Customer's Obligations**

- 9.1 The Customer:
- 9.1.1. Agrees not to use the Services for any illegal purposes and in accordance with any relevant laws (including data protection legislation);
- 9.1.2. Accepts responsibility for any Content transferred through the Services (including but not limited to e-mail, intranet or internet services);

- 9.1.3. Agrees not to use the Services to transmit or post any material which is defamatory, offensive or of an obscene or menacing character, or in such way as to cause annoyance or inconvenience;
- 9.1.4. Agrees not to use the Services in any manner which constitutes a violation or an infringement of the rights of any person, firm or company (including but not limited to, third party intellectual property rights or confidentiality).

## 10. **Indemnity**

- 10.1. The Customer agrees to indemnify the Company, its officers, agents and employees against damages, costs and expenses including legal fees and other liabilities incurred by the Company arising out of any breach of these Conditions by the Customer.

## 11 **Intellectual Property**

- 11.1 Where requested by the Customer the Company shall apply any Intellectual Property owned or controlled by the Customer to the Content (or any product of the Services).
- 11.2 Where any Intellectual Property or Content belonging to the Customer is advanced to the Company by the Customer, the Customer warrants that the Intellectual Property and Content does not infringe any third party intellectual property rights nor contain any material which is obscene, defamatory, offensive or illegal.
- 11.3 Unless otherwise agreed in writing by the Company, and subject to third party rights, all Intellectual Property created by the Company in the Content or otherwise in the course of provision of the Services shall remain the property of the Company.
- 11.4 Where rights in any Content are not wholly owned by the Company, the Company will have obtained a suitable licence in relation to its use in terms of the Contract from the relevant third party owner and the Customer hereby accepts that they will pay any additional costs of obtaining any such licence.
- 11.5 All rights in the Intellectual Property contained in any Proposal and/or presentation made to the Customer by the Company shall be and remain the exclusive property of the Company. In the event of the Proposal and/or presentation not being suitable for the Company's purposes, the Customer undertakes not to use or disclose any part thereof to any third party.
- 11.6 The Company hereby grants to the Customer a perpetual non-exclusive licence to use the Content for the purposes outlined in the Proposal, conditional upon the Company receiving full payment under Condition 5. Should the Customer wish to make extended or different use of Content from that outlined in the Proposal, the Customer must first contact the Company to seek a further licence upon terms suitable to the Company.

11.7 The Customer hereby acknowledges and agrees that the Company has the right to use any Content (or part thereof) whether or not the Intellectual Property contained therein is owned by the Company or the Customer for the purpose of demonstrating the Company's expertise to potential customers.

## **12 Force Majeure**

Neither party shall be liable for any delay in performance caused by circumstances beyond its reasonable control nor shall the party subject to delay be entitled to a reasonable extension of time for performance.

## **13 Notices**

13.1 All notices must be in writing and sent in each case to the registered office or business address of the party to whom the notice is addressed;

13.2 Any such notice must be delivered personally or by first class prepaid letter or by facsimile transmission and shall be deemed to have been served if by hand, when delivered, if by first class post, 48 hours after posting and if by facsimile transmission when dispatched.

## **14 Termination**

14.1 The Contract may be terminated forthwith by written notice from either party if;

14.1.1 The other commits any material breach of any of the terms of the Contract and, if capable of remedy, shall have failed within 30 days after the receipt of a request in writing from the other party so to do, to remedy the breach (such notice to detail the breach and to contain a warning of such party's intention to terminate); or

14.1.2 The other becomes insolvent or bankrupt, is otherwise unable to pay its debts as they fall due or ceases or threatens to cease trading.

14.2 The Contract may be terminated forthwith by written notice from the Company if;

14.2.1 The Customer fails to pay any sum due and such sum remains unpaid for 14 days after written notice from the Company that such sum has not been paid; or

14.2.2 The Customer breaches or the Company has reason to suspect that Customer has breached condition 9.



## **15 General**

- 15.1 The Contract constitutes the entire understanding of the parties relating to the subject matter hereof and supersedes any other arrangements between the parties provided always that nothing in these Conditions shall exclude or limit the Company's liability for fraud. Any variation to the Contract must be in writing executed by or on behalf of both parties.
- 15.2 The Company may sub-contract all or any of its obligations under the Contract to a third party. Except for this, neither party shall assign or otherwise transfer any of its rights or obligations.
- 15.3 No waiver by either party of any breach of the Contract shall be construed to be a waiver of any preceding or succeeding breach of the same or any other terms.
- 15.4 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provisions in question shall not be affected.
- 15.5 Nothing in the Contract shall be construed as giving rise to a relationship of partnership or agency between the parties.
- 15.6 The Contract and these Conditions shall be governed by and construed in accordance with the law of England. The Customer hereby submits to the non-exclusive jurisdiction of the English Courts.