

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**):

Concept: concepts produced for you to visualise the Deliverables, including (but not limited to) site mock-ups, graphics and design proposals;

Contract: either:

- (a) your purchase order and our acceptance of it, or
- (b) your acceptance of our Proposal under condition 2.2,

incorporating these Conditions;

Deliverables: all Documents, products and materials developed by us or our agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports, web sites and specifications (including drafts), together with those products specified in the Proposal;

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

In-put Material: all Documents, information and materials provided by you relating to the Services including (without limitation), computer programs, data, reports and specifications;

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or

unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Our Equipment: any equipment, including tools, systems, cabling or facilities, provided by us or our subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to you;

Pre-existing Materials: all Documents, information and materials provided by us relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports, specifications and Intellectual Property Rights owned by, or licenced to, us;

Proposal: the outline proposal sent to you by us detailing the Services and Deliverables to be provided and giving a price estimate or quotation for the provision of those Services;

Services: the services to be provided by us under the Contract as set out in the Proposal, together with any other services which we provide, or agree to provide, to you;

VAT: value added tax chargeable under English law for the time being and any similar additional tax;

we or us: Clarity IT Services Limited, a company incorporated in England and Wales with company registration number 6662382 whose registered office is at Four Corners Barn, Trezelah, Penzance, Cornwall TR20 8XD, and **our** shall have the appropriate meaning;

you: the person, firm or company who purchases Services from us, and **your** shall have the appropriate meaning; and

Your Equipment: any equipment, systems, cabling or facilities provided by you and used directly or indirectly in the supply of the Services;

1.2 Headings in these conditions shall not affect their interpretation.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to **writing** or **written** includes e-mail, but not faxes.
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to conditions are to the conditions of the Contract.

2 APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
 - (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in your purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by you, or implied by law, trade custom, practice or course of dealing.
- 2.2 Your purchase order, or your acceptance of our Proposal, constitutes an offer by you to purchase the Services on these Conditions. No offer placed by you shall be accepted by us other than:
 - (a) by a written acknowledgement issued and executed by us; or
 - (b) (if earlier) by us starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established. Your standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.
- 2.3 Proposals are given by us on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any Proposal is valid for a period of 30 days from its date, provided that we have not previously withdrawn it.

3 COMMENCEMENT AND DURATION

- 3.1 The Services supplied under the Contract shall be provided by us to you from the date of acceptance by us of the Customer's offer in accordance with condition 2.2.
- 3.2 Subject to conditions 6.6 and 12, the Services supplied under the Contract shall continue to be supplied as follows:
- (a) where the Services are being provided for the production of software or a website, 30 days after delivery of the Deliverables;
 - (b) where consultancy services are being provided, upon delivery of the Deliverables; and
 - (c) webhosting and/or support services will be supplied for 12-month periods until either party terminates the Contract by providing not less than 3 months' written notice to the other which expires at the end of any 12-month period.

4 OUR OBLIGATIONS

We shall use reasonable endeavours to provide the Services, and to:

- (a) deliver the Deliverables to you, in accordance in all material respects with our Proposal; and
- (b) obtain all necessary licences and consents that are required in relation to the Services.

5 YOUR OBLIGATIONS

5.1 You shall:

- (a) co-operate with us in all matters relating to the Services;
- (b) provide us, our agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to your data, servers and other facilities as we may require;
- (c) provide to us, in a timely manner, such In-put Material and other information as we may require and ensure that it is accurate in all material respects; and
- (d) where applicable, obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of Our Equipment, the use of In-put Material and the use of Your Equipment in relation to Our Equipment, in all cases before the date on which the Services are to start.

- 5.2 If our performance of our obligations under the Contract is prevented or delayed by any act or omission by you, your agents, subcontractors, consultants or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you arising directly or indirectly from such prevention or delay.
- 5.3 You shall be liable to pay to us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Contract, subject to us confirming such costs, charges and losses to you in writing.

6 CHARGES AND PAYMENT

- 6.1 In consideration of the provision of the Services by us, you shall pay the charges as set out in our Proposal, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if we provide Services on a time and materials basis. Condition **Error! Reference source not found.** shall apply if we provide Services for a fixed price. The remainder of this condition 6 shall apply in either case.
- 6.2 Where Services are provided on a time and materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with our standard daily fee rates, as set out in our Proposal and as amended from time to time in accordance with condition 6.5;
 - (b) our standard daily fee rates for each individual person are calculated on the basis of a seven-hour day, worked between 9.00am and 5.00 pm on weekdays (excluding public holidays), with a minimum charge period of four hours;
 - (c) we shall be entitled to charge an overtime rate of 100% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 6.2(b);
 - (d) all charges quoted to you shall be exclusive of VAT, which we shall add to its invoices at the appropriate rate;
 - (e) we shall ensure that every individual whom we engage on the Services completes time sheets recording time spent on the Services,

and we shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.2(f); and

- (f) we shall invoice you monthly in arrears for our charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6.2..
- 6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in our Proposal. The total price shall be paid to us (without deduction or set-off) as set out in our Proposal. At the end of a period specified in our Proposal, we shall invoice you for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in condition 6.4.
- 6.4 Any fixed price and daily rate contained in our Proposal excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom we engage in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by us for the supply of the Services. Such expenses, materials and third party services shall be invoiced by us at cost; and
 - (b) VAT, which we shall add to our invoices at the appropriate rate.
- 6.5 Unless otherwise agreed, a non-refundable deposit is required from you in the amount stated in our Proposal before we start to provide the Services.
- 6.6 The parties agree that we may review and increase the charges set out in our Proposal, provided that such charges cannot be increased more than once in any 12 month period. We will give you written notice of any such increase 4 months before the proposed date of the increase. If such increase is not acceptable to you, you may, within 1 month of such notice being received or deemed to have been received in accordance with condition 21, terminate the Contract by giving three months' written notice to us.
- 6.7 You shall pay each invoice submitted to you by us, in full and in cleared funds by cheque, BACS or PayPal, within 30 days of receipt to a bank account nominated in writing by us. Please note when using PayPal that we may charge a surcharge equivalent to no more than 3% of the amount you are paying to us. We will confirm the amount of the surcharge if you contact us prior to making your payment.
- 6.8 Without prejudice to any other right or remedy that we may have, if you fail to pay us on the due date, we may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and you shall pay the interest immediately on demand. We may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.

6.9 Time for payment shall be of the essence of the Contract.

6.10 All sums payable to us under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

6.11 We may, without prejudice to any other rights we may have, set off any liability you have to us against any liability we have to you.

7 SPECIFIC CONDITIONS RELATING TO THE SERVICES

7.1 General

You are responsible for testing any application, program or website before making it generally available for use. We will only correct any errors discovered after delivery of the Deliverables where:

- (i) they are notified to us within 30 days of delivery of the Deliverables; or
- (ii) we have agreed to provide ongoing support to you.

7.2 Website design and website hosting

- (a) Unless otherwise agreed, we will only produce one Concept per website commissioned.
- (b) We will use reasonable endeavours to ensure that any developed/designed site or application will function correctly on the server it is initially installed upon and that it will function correctly when viewed with the following browsers: Microsoft Internet Explorer (version 6 or above); Firefox; or Safari. We cannot guarantee compatibility with any browsers not listed in this condition 7.2(b).
- (c) We do offer web hosting facilities, but we cannot offer any guarantees, nor accept any liability, in relation to the availability of this service.

- (d) We reserve the right to refuse to host any websites which contain any material that we deem, at our sole discretion, to be offensive, illegal or in any way controversial.
- (e) Unless otherwise agreed, we are not responsible for your on-going website promotion.
- (f) We will use reasonable endeavours to optimise your website to achieve as high a ranking as possible with internet search engines. We cannot guarantee, nor accept any liability whatsoever, for your website's ranking with any search engine because this is beyond our control.

7.3 Databases and computer software

You are responsible for ensuring that any software produced by us for you is functioning correctly before use.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 Unless otherwise agreed, as between you and us, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by us. Subject to condition 8.2, we license all such rights to you free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable you to make reasonable use of the Deliverables and the Services. Unless we inform you otherwise, this licence shall continue notwithstanding the termination of this Contract for whatever reason.

8.2 You acknowledge that, where we do not own any Pre-existing Materials, your use of rights in Pre-existing Materials is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you.

9 CONFIDENTIALITY AND OUR PROPERTY

9.1 You 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 you by us, our employees, agents, consultants or subcontractors and any other confidential information concerning our business or our products which you may obtain.

9.2 You may disclose such information:

- (a) to your employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out your obligations under the Contract; and
 - (b) as may be required by law, court order or any governmental or regulatory authority.
- 9.3 You shall ensure that your employees, officers, representatives, advisers, agents or subcontractors to whom you disclose such information comply with this condition 9.
- 9.4 You shall not use any such information for any purpose other than to perform your obligations under the Contract.
- 9.5 All materials, equipment and tools, drawings, specifications and data supplied by us to you (including Pre-existing Materials and Our Equipment) shall, at all times, be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good condition by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.

10 LIMITATION OF LIABILITY

YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 10.1 This condition 10 sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents, consultants, and subcontractors) to you in respect of:
 - (a) any breach of the Contract;
 - (b) any use made by you of the Services, the Deliverables or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions limits or excludes our liability:
 - (a) for death or personal injury resulting from negligence; or
 - (b) for any damage or liability you incur as a result of our fraud or fraudulent misrepresentation; or

- (c) for any liability incurred by you as a result of any breach by us of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) we shall not be liable for: loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

11 DATA PROTECTION

You acknowledge and agree that details of your name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of us in connection with the Services.

12 TERMINATION

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other either on giving the other not less than 3 months' written notice or immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 12.1(c) to condition 12.1(i) condition 12.1(g) (inclusive); or
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (l) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

12.2 On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt;

- (b) you shall , within a reasonable time, return all of Our Equipment, Pre-existing Materials and Deliverables. If you fail to do so, then we may enter our premises and take possession of them. Until they have been returned or repossessed, you shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

12.3 On termination of the Contract (however arising), the conditions 7, 9, 10, 12 and 22 shall survive and continue in full force and effect:

13 FORCE MAJEURE

We shall have no liability to us under the Contract if we are prevented from, or delayed in performing, our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our workforce or that of any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

14 VARIATION

14.1 We may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If we request a change to the scope of the Services for any other reason, you shall not unreasonably withhold or delay consent to it.

14.2 Subject to condition 14.1, no variation of the Contract, these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15 WAIVER

15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or

remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16 SEVERANCE

- 16.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 16.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17 ENTIRE AGREEMENT

- 17.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

- 17.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

- 17.3 Nothing in this condition shall limit or exclude any liability for fraud.

18 ASSIGNMENT

- 18.1 You shall not, without our prior written consent, assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any manner with all or any of your rights or obligations under the Contract.

- 18.2 We may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent.

18.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

19 NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

20 RIGHTS OF THIRD PARTIES

A person who is not a party to the Contract shall not have any rights under or in connection with it.

21 NOTICES

21.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in your purchase order or our confirmation, or as otherwise specified by the relevant party by notice in writing to the other party.

21.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in condition 21.1 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or, if sent by email, at the time the email was sent.

21.3 This condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action.

22 GOVERNING LAW AND JURISDICTION

22.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.