



BISON GRID LTD TERMS AND CONDITIONS

1.0 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

- **Contract:** the Customer's purchase order (if any) and the Project Estimate and the Supplier's acceptance of it under condition 3.
- **Customer:** the person, firm or company who purchases Services from the Supplier.
- **Deliverables:** all products and materials developed by the Supplier in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).
- **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation 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.
- **Pre-existing Materials:** materials which existed before the commencement of the Project.
- **Project:** the list of services as detailed in the Project Estimate.
- **Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Estimate.
- **Project Estimate:** the detailed list of services describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities for the provision of the Services by the Supplier in accordance with the Contract.
- **Services:** the services to be provided by the Supplier under the Contract.
- **Supplier:** BISON GRID LIMITED Company Registration Number 04723654 whose registered office is at 52 Holly Grove Fareham Hampshire PO16 7UP.
- **Supplier's Project Manager:** the Supplier's manager for the Project, appointed in accordance with condition 4.3
- **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

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 company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to writing or written includes faxes and e-mail.

1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2. APPLICATION OF CONDITIONS

2.1 These conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. EFFECT OF PURCHASE ORDER

The Customer's purchase order and the Project Estimate constitute an offer by the Customer to purchase the Services specified in it on these conditions; accordingly, the written acceptance of the Project Estimate or execution and return of the acknowledgement copy of the purchase order form (or the Project Estimate) by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order or Project Estimate, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. SUPPLIER'S WARRANTIES

4.1 The Supplier warrants that the software code as set out in more detail in the Project Estimate will conform in all material respects to the specification for a period of 28 days from the date of the license ("the Warranty Period"). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not



result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate the licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

4.2 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

4.3 Any third party Software provided by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant third party Software is distributed, but is provided "as is" and expressly subject to the disclaimer set out in clause 4.4.

4.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Project Estimate or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

5. SUPPLIER'S OBLIGATIONS

5.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Project Estimate.

5.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Project Estimate, but any such dates shall be estimates only and time shall not be of the essence of the Contract. 5.3 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as Supplier's Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

5.4 The Supplier will use reasonable endeavours to provide the customer with a 99.99% uptime of their managed cloud server and front end caching services(CDN). Should the server and caching services fall below this the customer will be credited back the hosting subscription fees(calculated per an hour) for the period of time that the server or service was unavailable.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Project and appoint an individual, who shall have the authority to contractually bind the Customer on matters relating to the Project;
- (b) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (c) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects; and
- (d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

6.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

6.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of twelve months after the completion of the Services or termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.

6.4 Any consent given by the Supplier in accordance with condition 6.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 50% of the then current annual remuneration of the Supplier's employee or sub-contractor or, if higher, 50% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

7. CHANGE CONTROL

7.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

7.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:



- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Project Estimate; and
- (d) any other impact of the change on the terms of the Contract.

7.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

7.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Estimate and any other relevant terms of the Contract to take account of the change.

8. CHARGES AND PAYMENT

8.1 Condition 8.2 shall apply if the Services are to be provided on a time-and-materials basis. Conditions 8.3 and 8.4 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 8 shall apply in either case.

8.2 Where the Services are provided on a time-and-materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly or daily fee rates as amended from time to time;
- (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.30 am and 5.30 pm on weekdays (excluding weekends and public holidays);
- (c) the Supplier shall be entitled to charge at an overtime rate of 150% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 8.2(b) on a pro-rata basis;
- (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 8.2(e) and
- (e) the Supplier shall invoice the Customer monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 8. Each invoice shall set out the time spent on tasks undertaken by the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

8.3 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Estimate. The total price shall be paid to the Supplier (without deduction or set-off) in instalments as set out in the Project Estimate on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in condition 8.4.

8.4 Any fixed price contained in the Project Estimate excludes:

- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and
- (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.

8.5 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.

8.6 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% 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. The Supplier 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.

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

8.8 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 The customer will own the copyright in the HTML or CSS code part of the deliverables created under this contract. The copyright and other intellectual property rights in any materials or software (whether written or machine readable) created by or licensed to the Supplier during this agreement or outside this engagement and any subsequent modifications to the same ("Pre-Existing Works") will remain vested in the Supplier (or Supplier licensor), but to the extent that these form part of any of the deliverables, the Customer will have a non-exclusive, non-transferable license for the Customer's own internal use and only for the purposes for which they were delivered but the Customer must not provide these (or any Pre-Existing Works to the extent that these form part of the deliverables) or copies of them to any



third party to use them. If the Supplier terminates the Contract under condition 12.1, this licence will automatically terminate.

9.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

10. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

10.1 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 Supplier or its agents, and any other confidential information concerning the Supplier'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 it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

10.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, 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 Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorization.

10.3 The Supplier and its subcontractors are committed to ensuring that all information received from the Customer is kept confidential during the Project in such cases where such information is not freely available and is not available to third parties. Individual systems consultants carrying out work under the Project for the Customer will if required sign their own confidentiality agreements.

10.4 This condition 10 shall survive termination of the Contract, however arising.

11. LIMITATION OF LIABILITY

11.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss or corruption of data or information; or
 - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to a maximum claim of £250,000.00 (Two hundred and fifty thousand pounds sterling).

12. TERMINATION

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or



by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

(e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or

(f) the other party ceases, or threatens to cease, to trade; or

(g) there is a change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the other party; or

(h) the other party takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

12.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.

13. FORCE MAJEURE

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or 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 sub-contractors.

14. WAIVER

14.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

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

15. SEVERANCE

15.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

15.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

16. ENTIRE AGREEMENT

16.1 Each of the parties acknowledges and agrees that in entering into the Contract and the documents referred to in it or annexed to it, it does not rely on any statement, representation (whether innocent or negligent), assurance or warranty (Representation) (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Contract or those documents.

16.2 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in the Contract.

16.3 Nothing in this clause shall limit or exclude any liability for fraud.

17. ASSIGNMENT

17.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

20. NOTICES

20.1 Any notice under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address as set out in the Contract, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as used in the Contract.

20.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not during business hours, at 9.30 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been



delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

21. DISPUTE RESOLUTION

21.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this clause.

21.2 For the purpose of this clause, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.

21.3 Unless this Project has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the Project for a period of 28 days (all periods specified in this clause 21.3 shall be extendable by mutual agreement) with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments (excluding any disputed sums) in accordance with the purchase order or Project Estimate. After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 21.3 shall be extendable by mutual agreement):

(a) within three days, the Supplier's Project Manager and the Customer shall meet to attempt to settle the dispute;

(b) if the Supplier's Project Manager and the Customer are unable to reach a settlement within seven days from the date of service of the notice, of each of the parties shall meet within the following four days to attempt to settle the dispute ; and

(c) if no settlement results from the meeting specified in this clause 21.3(b) the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

21.4 If no settlement is reached under clause 21.3:

(a) if the dispute is of a technical nature concerning the interpretation of the specification of the Deliverables or any similar or related matter then such dispute shall be referred for arbitration, to be carried out in accordance with the procedure set out by an arbitrator appointed from the Centre for Effective Dispute Resolution (www.CEDR.com). The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees;

(b) in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court as soon as possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and

(c) in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.

22. GOVERNING LAW AND JURISDICTION

22.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

22.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including without limitation non-contractual disputes or claims).