



Terms & Conditions of Business - AddingValue Business Limited

1 DEFINITIONS

“the Agreement”

means the Agreement between the Client and AddingValue for the provision of the Services, comprising the Programme Confirmation (together with any schedules thereto, as amended and updated from time to time) and these Conditions;

“Budget”

means the budget agreed between the parties setting out the Price (as amended by agreement between the parties from time to time);

“Business Day”

means any day, other than a Saturday, Sunday or public holiday in England;

“the Client”

means the client of AddingValue named in the Programme Confirmation;

“Conditions”

means these Terms and Conditions of Business;

“Confidential Information”

has the meaning set out in clause 9.1

“Deliverables”

means any product, drawing, artwork, storyboard or other deliverable item (including software) that AddingValue has agreed in the schedule to the Programme Confirmation to develop and/or supply to the Client as part of the Services;

“Delivery Date”

means the date on which the Services and/or Deliverables are to be provided and/or delivered pursuant to the Agreement;

“Highly Confidential Information”

means Confidential Information relating to AddingValue’s pricing structure, the amount of the Fee and any source code of any software;

“Intellectual Property Rights”

means the following rights, wherever in the world enforceable:-

- (i) any patents or patent applications;
- (ii) any trade marks (whether or not registered) including any applications for registration of the same;
- (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
- (iv) copyright or design rights (whether registered or unregistered) in respect of drawings, designs, articles, specifications, mathematical algorithms, research materials, circuit boards, technical documentation or other documents and including rights

in any database, any software (including rights in any source codes relating thereto), firmware or hardware;

(v) any goodwill in any trade or service name, trading style or get-up;

(vi) database rights and rights in data; and

(vii) any and all other intellectual or industrial property rights;

“the Price”

means the fixed price for the Services set out in the Budget (as amended and updated from time to time) which includes all expenses relating to the Services;

“Programme Confirmation”

means the programme confirmation signed on behalf of AddingValue and the Client, whereby the Client has agreed to appoint AddingValue to provide the Services;

“the Proposal”

means the Proposal prepared by AddingValue for the Client, as amended, modified and/or added to from time to time;

“the Services”

means the Services to be provided by AddingValue to the Client in accordance with the Agreement, as set out in a schedule to the Programme Confirmation (as amended and updated from time to time);

“AddingValue”

means AddingValue Business Limited whose principle place of business is 57 Holly Road, Twickenham, Middlesex TW1 4HW

2 THE AGREEMENT

2.1 A quotation by AddingValue (whether set out in the Proposal, the Programme Confirmation or otherwise) does not constitute an offer and AddingValue reserves the right to withdraw or revise any quotation at any time prior to the formation of the Agreement between AddingValue and the Client.

2.2 The Agreement will be formed when the Client signs and returns the Programme Confirmation (without amendment) to AddingValue.

2.3 AddingValue shall provide the Services to the Client in accordance with this Agreement. By signing and returning the Programme Confirmation and/or accepting any Deliverables the Client shall be deemed to have accepted this Agreement to the exclusion of all other terms and conditions (including any terms or conditions of the Client).

2.4 No variations to the Agreement shall be binding unless agreed in writing between the authorised representatives of AddingValue and the Client.

2.5 In entering into the Agreement the Client acknowledges that the Client has not been induced to enter into the Agreement as a result of any promise or



representation by AddingValue otherwise than as expressly set out in the Agreement. AddingValue's employees or agents are not authorised to make any representation concerning the Services unless confirmed by AddingValue in writing. However, AddingValue does not exclude any liability for any misrepresentation, which is made fraudulently.

2.6 Any typographical, clerical or other error or omission in the Agreement or in any sales literature, quotation, Price list, invoice or other document or information issued by AddingValue may be corrected by AddingValue without any liability to the Client.

3 DURATION

3.1 The Agreement shall commence on the date on which AddingValue receives the Programme Confirmation signed by the Client and shall continue, subject to Clauses 5.5, 11 and 12 below, unless and until terminated by either party giving to the other not less than six months' notice in writing.

3.2 Upon termination of the Agreement for any reason, the Client will immediately pay AddingValue (without limitation to AddingValue's other rights and remedies hereunder) the proportion of the Price which relates to any Services performed up to and including the effective date of termination together with all third party expenses incurred or contracted to be incurred by AddingValue.

4 CANCELLATION

4.1 The Client may cancel any Services at any time on three month's written notice to AddingValue. Upon any such cancellation, the Client shall indemnify AddingValue in respect of any losses, liabilities, damages, claims, costs and expenses (including reasonable legal fees and the cost of terminating any third party contracts entered into by AddingValue on the Client's behalf) incurred by AddingValue directly or indirectly as a result of such cancellation and shall pay to AddingValue on demand fees equal to the proportion of the Price relative to any Services already performed as at the time of such cancellation, provided that the amount payable shall not exceed the Price.

5 THE PRICE and PAYMENT

5.1 Subject to Clause 2.1, the Price for the Services shall be AddingValue's quoted Price set out in a schedule to the Programme Confirmation. The Price is exclusive of VAT for which the Client shall be additionally liable at the rate applicable on the date of AddingValue's invoice. The Client acknowledges that the amounts set out in the Budget in respect of third party expenses are estimates only. However, unless otherwise agreed with the Client, AddingValue will not charge in excess of the Price should any expenses exceed the estimates set out in the Budget. AddingValue shall be entitled to retain the benefit of any bulk, volume or similar discounts received by it in respect of any such expenses.

5.2 If the cost to AddingValue of providing the Services increases as a result of any change to the scope of the

Services, any change to the law, any breach by the Client of the Agreement, the supply of inadequate or inaccurate information by the Client or any other reason beyond AddingValue's reasonable control, such increase shall be added to the Price payable in respect of the Services.

5.3 All Prices for Deliverables shall be quoted exclusive of charges for transport, packaging and insurance, for which the Client shall be additionally liable.

5.4 Payment of the Price shall be made without any deduction, withholding or set-off, within 30 days of AddingValue's invoice date. Time for payment shall be of the essence. If the Client fails to pay any invoice by its due date, AddingValue shall be entitled to charge interest on the outstanding amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

5.5 If the Client fails to make any payment within 14 days of the due date then, without prejudice to any other right or remedy available to AddingValue, AddingValue shall be entitled to terminate the Agreement, either in its entirety or in relation to any specific event(s) or project(s), or suspend further performance of its obligations under the Agreement until payment of all sums payable by the Client has been made in full.

6 SUPPLY OF SERVICES

6.1 AddingValue shall supply the Services referred to in the schedule to the Programme Confirmation, as amended and updated from time to time.

6.2 AddingValue reserves the right to make any changes to the Services, which are necessary to comply with any applicable safety, statutory or other mandatory requirements.

6.3 Unless specified to the contrary in the Programme Confirmation, any Delivery Dates quoted are approximate only and AddingValue shall not be liable for any delay in delivery howsoever caused. Time for delivery shall not be of the essence unless specified in the Programme Confirmation or otherwise agreed by AddingValue in writing.

6.4 The Client may require and AddingValue is willing to give positive consideration to any variations to the Services and/or to the provision of any additional services from time to time during the term of the Agreement, subject to the parties first agreeing an appropriate increase in the Price. Such varied and/or additional services shall then be deemed to be included in the Services for the purposes of the Agreement. Subject to Clause 6.2, no variation or addition to the scope of the Services shall formally take effect unless and until agreed in writing by both parties.

7 OBLIGATIONS OF THE CLIENT

The Client will:-

7.1 Keep AddingValue fully indemnified against any claims, losses, costs, expenses or damages incurred by



or awarded against AddingValue as a result of carrying out the Services or producing any Deliverables in accordance with the Client's requirements or specifications, including without limitation any claim, loss or damage arising out of or in connection with any claim that all or any part of the Services or Deliverables is unlawful or infringes the rights of any third party;

7.2 Promptly provide to AddingValue all facilities, information, assistance and materials (including access to the Client's premises) as may be requested by AddingValue from time to time to facilitate the proper and timely provision of the Services. The Client warrants that all information provided by it to AddingValue will be accurate in all material respects and that it is entitled to provide the information without the consent of any third party;

7.3 Inform AddingValue as soon as it becomes aware that:

7.3.1 The provision of the Services by AddingValue may or will infringe any right (including copyright) of any third party or any law, statutory provision, regulation or code in which case, or if AddingValue becomes aware that the provisions of the Services may or will infringe any right (including copyright) of any third party or any law, statutory provision, regulation or code, AddingValue will have the right to suspend the provision of the relevant Services; or

7.3.2 Any information supplied to AddingValue is false, misleading or inaccurate, or in contravention of any relevant laws, regulations or codes.

7.4 Supply to AddingValue all relevant information and evidence required to enable AddingValue to obtain (at the Client's expense) any necessary licences and authorisations, and to comply with any applicable laws, regulatory requirements and codes of practice in carrying out its obligations hereunder; and

7.5 Keep AddingValue fully and effectively indemnified in respect of any loss or damage suffered by AddingValue as a result of the Client's failure to comply with this Clause 7.

8 COPYRIGHT AND OTHER PROPRIETARY RIGHTS

8.1 All Intellectual Property Rights in all Deliverables shall vest in and remain the property of AddingValue and the Client shall acquire no right, title or interest in or to the same. For the avoidance of doubt this shall include any software used or bespoke software developed by AddingValue, which is required to enable AddingValue to perform the Services under this Agreement.

8.2 Subject to Client paying the Price in full AddingValue, grants to the Client a non-exclusive, non-transferable licence to use the Deliverables (other than software) and, subject to paragraph 8.3, all Intellectual Property Rights in the Deliverables solely for the purpose set out in this Agreement.

8.3 Subject to Clause 8.2, where the Intellectual Property Rights in any material used in the provision of

the Services are vested in a third party, such Intellectual Property Rights will remain with such third party but AddingValue shall use its reasonable endeavours to obtain appropriate licences or consents for use of the same by the Client. Client acknowledges that a fee may be payable to the relevant third party in consideration for the grant of such licence which will be in addition to the Price.

8.4 AddingValue shall retain all Intellectual Property Rights in any computer programs, object code, source code and network designs, inventions, know-how, improvements, discoveries whether created, produced or developed by, or on behalf of, AddingValue (whether alone or jointly with others) either (i) during the term of the relevant Agreement but not solely for the purpose of performing its obligations hereunder or (ii) prior to the date of this Agreement. AddingValue offers access to certain of its software by way of an extranet, which is accessed by password. The use of any extranet is subject to the terms and conditions appearing on that extranet from time to time, which must be accepted before the Client can access that extranet. If any software owned by a third party is required to exploit the Deliverables, AddingValue shall use its reasonable endeavours to procure a licence for the Client to use such software on such terms as may be agreed between AddingValue and the relevant third party.

8.5 In the event the Client sources material from a third party for use by AddingValue in the provision of the Services, the Client shall obtain all requisite consents or licences for use of such material by AddingValue.

9. CONFIDENTIALITY

9.1 Each of the parties acknowledges that, whether by virtue of and in the course of its dealings with the other, whether under an Agreement or otherwise, it shall receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party ("Confidential Information").

9.2 Confidential Information includes without limitation:

9.2.1 trade secrets

9.2.2 information and data relating to a party's (i) existing or potential customers, employees or officers; (ii) inventions, designs, products and/or product lines; (iii) research and development; (iv) production, manufacturing and/or engineering processes; (v) price lists and/or pricing structures; (vi) marketing and sales plans and/or processes; (vii) business plans or dealings; and/or (viii) finances; and

9.2.3 the contents of any document marked "Confidential", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.

9.3 Confidential Information shall exclude information which:



9.3.1 at the time of receipt by the recipient is publicly available;

9.3.2 subsequently becomes publicly available through no fault of the recipient, its officers, employees or agents;

9.3.3 is lawfully received by the recipient from a third party on an unrestricted basis; and/or

9.3.4 is already known to the recipient before receipt from the other party.

9.4 Each of the parties undertakes to maintain the confidentiality of the other party's Confidential Information at all times and to keep the other party's Confidential Information secure and protected against theft, damage, loss or unauthorised access. Neither party shall at any time, whether during the term of an Agreement or at any time thereafter, without the prior written consent of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations hereunder.

9.5 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under these Conditions.

9.6 Upon the earlier of a written request from the disclosing party or the termination of an Agreement for any reason, each party shall return all of the other party's Confidential Information then in its possession or control and will not retain any copies of the same.

9.7 Each party shall immediately upon becoming aware of the same give notice to the other party of any unauthorised disclosure, misuse, theft or other loss of the other party's Confidential Information whether inadvertent or otherwise.

9.8 The parties agree that Highly Confidential Information is both confidential and consists of trade secrets and as such if it was to be disclosed pursuant to a request made to the Client under the Freedom of Information Act 2000 such disclosure would be a breach of confidence and would be likely to prejudice the commercial interests of AddingValue.

9.9 Neither party shall be in breach of this Clause 9 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

9.10 Subject to prior consultation with the Client as to the terms and/or the timing of any advertisement or announcement, AddingValue may advertise or publicly announce that it is performing the Services for the Client under an Agreement.

9.11 The terms of and obligations imposed by this Clause 9 shall survive the termination of an Agreement for any reason.

10 LIABILITY and INSURANCE

10.1 Except in respect of fraud, or death or personal injury caused by the negligence of AddingValue or any person under its control:-

10.1.1 AddingValue shall not be liable to the Client for any loss of income or actual or anticipated profits, loss of contracts, loss of goodwill, loss of business, loss of anticipated savings, loss of revenue or loss of data, or for any indirect, special or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise; and

10.1.2 AddingValue's maximum aggregate liability under or in connection with the Agreement, whether in contract, tort (including negligence) or otherwise, shall (unless otherwise agreed with the Client in writing) in no circumstances exceed an amount equal to the Price payable in respect of the Agreement in question.

10.2 The Client shall effect and maintain, during the term of the Agreement, under a policy or policies approved by AddingValue in writing, such insurance as is necessary in respect of the risks and liabilities of the Client, its officers, employees, agents and contractors in connection with the receipt of the Services. Such policy or policies shall have face amounts and other terms reasonably acceptable to AddingValue. The Client will provide written evidence of such coverages to AddingValue on Company's reasonable request.

11 FORCE MAJEURE

11.1 Save as provided in clause 11.4, neither party shall be liable to the other for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "Force Majeure Event").

11.2 Force Majeure Events shall include but not be limited to the following:

11.2.1 strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any employees of the party seeking to rely on the Force Majeure Event);

11.2.2 civil commotion, riot, invasion, war (whether declared or not) or threat of or preparation for war;

11.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

11.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

11.2.5 impossibility of the use of telecommunications networks or infrastructure;



11.2.6 compliance with any law or governmental order, rule, regulation or direction;

11.2.7 breakdown of plant or machinery.

11.3 The party whose performance is affected by a Force Majeure Event shall, within two Business Days of becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which the performance of its obligations are likely to be prevented or delayed.

11.4 The occurrence of a Force Majeure Event shall not have the effect of discharging or postponing the affected party's payment obligations to the other party.

12 TERMINATION EVENTS

12.1 In the event that:

12.1.1 either party is in material or persistent breach of the Agreement, which if capable of remedy, has not been remedied within 30 days of the date of written notice from the other party requiring remedy of such breach;

12.1.2 either party becomes insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors, or takes or suffers any similar action in consequence of its debt; or

12.1.3 either party ceases, or threatens to cease, to carry on business; or

12.1.4 either party reasonably believes that any of the events mentioned above is about to occur in relation to the other party then, without prejudice to any other right or remedy available if the non-defaulting party shall be entitled forthwith to terminate the Agreement or suspend performance of its obligations under the Agreement without any liability to the other party (save for in respect of fees accrued and expenses incurred up to and including the date of termination).

13 DATA PROTECTION

13.1 Each party shall comply with the provisions of the Data Protection Act 1998 (including the Data Protection Principles) set out in that Act and any similar or analogous laws, regulatory requirements or codes of practice governing the use, storage or transmission of personal data in the country where such personal data is processed and shall not permit any thing to be done which might cause or otherwise result in a breach by either party of the same.

13.2 Client acknowledges that for the purpose of the Data Protection Act 1998, it is the data controller and AddingValue is the data processor of any personal data provided to it by Client or obtained by AddingValue as part of its obligations hereunder. In its capacity as data processor, AddingValue undertakes to keep such

personal data secure to ensure that Client is not in breach of its obligations under the Seventh Principle of the Data Protection Act 1998.

13.3 Client undertakes to obtain all necessary consents from any other individuals to which such personal data relates to ensure that AddingValue has the right to process the personal data (including the right to transfer and to process the personal data in a country outside the European Economic Area) in accordance with the provisions of these Conditions.

13.4 AddingValue shall comply with the Client's reasonable instructions in relation to the collection, processing and disposal of any personal data.

14 RISK, TITLE and PROPERTY

14.1 Risk of damage to or loss of any Deliverables shall pass to the Client at the time of delivery or, if the Client wrongfully fails to take delivery of the Deliverables, at the time when AddingValue has tendered delivery of the Deliverables.

14.2 Notwithstanding delivery and the passing of risk in the Deliverables, title to any copies of the Deliverables shall not pass to the Client until AddingValue has received, in cleared funds, payment in full of the Price of such Deliverables and all other Services and Deliverables for which payment is then due.

14.3 Until such time as title in such copies of the Deliverables passes to the Client pursuant to Clause 14.2 above, the Client shall hold such copies as AddingValue's fiduciary agent and bailee, and shall keep such copies separate from all goods of the Client and third parties and properly stored, protected and insured and identified as AddingValue's property, provided that the Client shall be entitled to use such copies in accordance with the provisions of Clause 8.2 above.

14.4 Until such time as title in any copies of the Deliverables passes to the Client in accordance with Clause 14.2 above (and provided such copies are still in existence and have not been resold), AddingValue shall be entitled at any time to require the Client to deliver up any such copies of the Deliverables to AddingValue and, if the Client fails to do so immediately on demand, to enter upon any premises of the Client or any third party where such copies are stored and repossess the same.

14.5 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Deliverables, which remain the property of AddingValue, but if the Client does so all monies owing by the Client to AddingValue shall (without prejudice to any other right or remedy of AddingValue) immediately become due and payable.

14.6 The provisions of this Clause 14 shall not apply to any Software, save as expressly agreed in writing between the parties.

15 GENERAL



15.1 Any failure by AddingValue to enforce or to exercise at any time or for any period of time any term of or any right pursuant to the Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect AddingValue's right subsequently to enforce or exercise it.

15.2 If any provision of the Agreement is held by any competent authority to be illegal, invalid or unenforceable, such provision shall, insofar as it is severable from the remaining provisions of the Agreement, be deemed omitted from the Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

15.3 The Client shall not transfer or assign its obligations under the Agreement without the prior written consent of AddingValue.

15.4 AddingValue may assign, sub-contract or transfer the Agreement or any of its rights or obligations thereunder without the prior written consent of the Client provided that AddingValue shall remain responsible for the work of its sub-contractors. If AddingValue sub-contracts any of its obligations under this Agreement, it does so as principal and not as agent for the Client.

15.5 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Agreement, nothing in this Agreement shall constitute the parties as partners, joint venturers or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

16 NOTICES

16.1 Unless otherwise expressly stated in the Agreement, all notices and other communications required or permitted to be given in connection with the Agreement shall be in writing and shall be deemed duly served if delivered by hand or sent by fax or pre-paid registered post (or, in the case of an address for service outside the United Kingdom, by registered air-mail) to the intended recipient at the address set out in the Programme Confirmation.

16.2 Any notice shall be deemed to have been duly served:-

16.2.1 if delivered by hand, on delivery;

16.2.2 if sent by pre-paid registered post, two Business Days after posting;

16.2.3 if sent by registered air-mail, five Business Days after posting;

16.2.4 if sent by fax:

16.2.4.1 during normal business hours, immediately on transmission;

16.2.4.2 outside normal business hours, on the following Business Day,

16.3 provided that, in each case, (i) a confirmatory transaction report is obtained and retained by the sender and (ii) a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next Business Day.

16.4 For the purpose of Clause 16, "Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent, and the phrase "normal business hours" refers to normal business hours in that place.

16.5 For the avoidance of doubt, no notice given under any Agreement shall be validly served if sent by e-mail.

17 NON SOLICITATION

17.1 Throughout the term of the Agreement, and for a period of one year following the expiry or termination of the Agreement for any reason, the Client will not, directly or indirectly, employ or retain the services of or assist any third party to employ or retain the services of any person who is or at any time during the preceding twelve months was employed by AddingValue or engaged by AddingValue to provide services in relation to the Services (a "Relevant Worker"), or persuade or attempt to persuade any Relevant Worker to leave the employ of AddingValue or to cease to provide services to AddingValue or to become employed or retained to provide services by anyone other than AddingValue.

18 RIGHTS of THIRD PARTIES

18.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

19 Applicable Law and Dispute Resolution

19.1 The construction validity and performance of this Agreement shall be governed by English law and subject to paragraph 19.2 AddingValue and the Client hereby submit to the exclusive jurisdiction of the English courts.

19.2 If any dispute arises out of any Agreement, if the parties agree, the parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

End