

TERMS AND CONDITIONS FOR THE SUPPLY OF DELIVERABLES

1. Our Agreement

- 1.1. These terms and conditions apply to the Contract between you and us. Please read them carefully so that you fully understand what your Contract provides and what you can expect from Ngage.

2. Definitions

- 2.1. Certain words and expressions used in these terms and conditions and the Service Letter have the meanings set out in this section:

Bespoke Software: means the software developed by Ngage specifically for the Customer as part of the Deliverables.

Charges: means the charges payable by the Customer in accordance with the Contract.

Commencement Date: has the meaning given in clause 3.1. **Conditions:** means these terms and conditions as amended from time to time.

Contract: means these Conditions, the Specification and any bespoke written agreement entered into between the Customer and Ngage. **Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly. **Customer:** means the person or firm who enters into the Contract with Ngage.

Customer Default: has the meaning set out in clause 5.2.

Deliverables: means the software, application and/or website services set out in the Specification.

Intellectual Property Rights: means any patents, source code (excluding 3rd party), utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements;

Ngage: means Ngage Technology Limited, a company incorporated in Scotland under Company Number SC525427 having its registered office at 58 Cook Road, Haldane, Balloch, West Dunbartonshire, Scotland. **Ngage**

Materials: means all software or any other material incorporated into the Deliverables that is not Bespoke Software.

RSD: means the Requirements Specification Document (also known as a Software Requirements Specification or System Requirements Specification) is the document which describes the features and behaviour of a system or software application. The RSD includes a variety of elements which attempt to define the intended functionality required by the Customer to satisfy their different users. The RSD also defines at a high-level the main business processes that will be supported, with simplifying assumptions have been made and what key performance parameters the system will need to meet.

Specification: means the proposal document produced by Ngage for the Customer the provides the technical specification of the Deliverables. **User:** means anyone who is given access to the Deliverables by the Customer.

2.2. Interpretation:

- 2.2.1. A reference to a statute or statutory provision in reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 2.2.2. Any words following the terms including, include, in particular, for example or similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 2.2.3. A reference to writing or written includes email.
- 2.2.4. In the event any of the terms in these Conditions conflict with terms contained in the Specification or any bespoke written agreement entered into between the Customer and Ngage, the Specification or bespoke written agreement shall prevail over these Conditions.

3. Basis of the Contract

- 3.1. The Contract shall only be deemed to be accepted when the Customer accepts the Specification document produced by Ngage at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 3.2. Any samples, drawings, descriptive matter, or advertising issued by Ngage, and any descriptions or illustrations contained in the Ngage's documents, are issued for the sole purpose of giving an approximate idea of the Deliverables described in them. They shall not form part of the Contract or have any contractual force.

- 3.3. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 3.4. Any quotation given by Ngage shall not constitute an offer.

4. Supply of Deliverables

- 4.1. Ngage shall supply the Deliverables to the Customer in accordance with the Specification in all material respects.

- 4.2. Ngage shall use all reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimated only and time shall not be of the essence for performance of Deliverables, unless agreed otherwise.

- 4.3. Ngage reserves the right to amend the Specification and/or RSD if necessary to comply with any applicable law or regulatory requirements, or if the amendment will not materially affect the nature or quality of the Deliverables and Ngage will notify the Customer in any such event.

- 4.4. Notwithstanding the provisions of this Contracts and this clause 4.4, the supply of the Deliverables to the Customer will be deemed to have taken place only on the dates on which both Ngage and the Customer mutually agree in writing that the Deliverables have been supplied, with such agreement not to be unreasonably withheld by the Customer.

- 4.5.

5. Customer Obligations 5.1. The Customer shall:

- 5.1.1. ensure that any information it provides in the Specification is complete and accurate;
- 5.1.2. co-operate with Ngage in all matters relating to the Deliverables; and
- 5.1.3. provide Ngage with such information and materials as Ngage may reasonably require in order to supply the Deliverables, and ensure that such information is complete and accurate in all material respects.

5.2. If Ngage's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer to perform any relevant obligation (**Customer Default**):

- 5.1.1. without limiting or affecting any other right or remedy available to it, Ngage shall have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Ngage's performance of any of its obligations;

- 5.1.2. Ngage shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Ngage's failure or delay to perform any of its obligations as set out in this clause 5.2; and

- 5.1.3. the Customer shall reimburse Ngage on written demand for any costs or losses sustained or incurred by Ngage arising directly or indirectly from the Customer Default.

6. Charges and Payment

- 6.1. Ngage shall submit invoices in accordance with the pricing structure set out in the Specification or as otherwise agreed in writing with the Customer.

- 6.2. The Customer shall make payment of each invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, if no payment due date is specified.
- 6.3. If the Customer fails to make any payment due to Ngage under the Contract by the due date for payment, then, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Customer shall pay the interest together with the overdue amount.
- 6.4. Subject to the prior written consent of the Customer, reasonable out of pocket expenses may be charged by Ngage on production of evidence of expenditure to the Customer.
7. **Intellectual Property Rights**
- 7.1. All Intellectual Property Rights in Ngage Materials are, and shall remain, the property of Ngage or the appropriate third-party rights owner, if any.
- 7.2. The Customer acquires no rights in or to Ngage Materials or Bespoke Software other than those expressly granted by any bespoke written agreement entered into between Ngage and the Customer alongside these Conditions.
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- 7.3. The Customer shall use reasonable endeavours to prevent any infringement of the Intellectual Property Rights in the Ngage Materials and shall promptly report to Ngage any such infringements that come to its attention. In particular, the Customer shall:
- 7.3.1. ensure that each User, before starting to use the Deliverables, is made aware that the Ngage Materials are the proprietary to Ngage (or the appropriate third parties) and that it may only be used in accordance with this agreement.
8. **Limitation of Liability**
- 8.1. Nothing in the Contract shall limit or exclude Ngage's liability for:
- 8.1.1. fraud or fraudulent misrepresentation;
- 8.1.2. death or personal injury caused by negligence; or
- 8.1.3. any matter for which it would be unlawful for the parties to exclude liability.
- 8.2. Subject to clause 8.1, Ngage shall not be liable to the Customer, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with Contract for:
- 8.2.1. loss of profits;
- 8.2.2. loss of sales or business;
- 8.2.3. loss of agreements or contracts;
- 8.2.4. loss of anticipated savings;
- 8.2.5. loss of use or corruption of software, data or information;
- 8.2.6. loss of damage to goodwill; or 8.2.7. any indirect or consequential loss.
- 8.3. Subject to clause 8.1, Ngage's total liability to the customer, whether in contract or delict (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 8.4. This clause 8 shall survive termination of the Contract.
9. **Termination**
- 9.1. Without prejudice to any rights that have accrued under these Conditions and the Contract or any of its rights or remedies, either party may at any time terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.1.1. 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 14 days after being notified in writing to make such payment;
- 9.1.2. the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 9.1.3. the other party repeatedly breaches any of the terms of the Contract and these Conditions in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- 9.1.4. 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 9.1.5. 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;
- 9.1.6. 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 clause 9.1.4 and 9.1.5; or
- 9.1.7. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
10. **Consequences of Termination**
- 10.1. On termination of the Contract:
- 10.1.1. the Customer shall immediately pay to Ngage all of Ngage's outstanding unpaid invoices and interest and, in respect of Deliverables supplied but for which no invoice has been submitted, Ngage shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.1.2. the Customer shall return any materials supplied by Ngage and any Deliverables which have not been fully paid for.
- 10.2. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
11. **Force Majeure**
- 11.1. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond reasonable control.
12. **Assignment and other dealings**
- 12.1. Subject to the prior written consent of the Customer, Ngage may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 12.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

13. **Confidentiality**
- 13.1. Each party undertakes not to use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under the Contract ("**Permitted Purposes**").
- 13.2. When one Party discloses (the "**Disclosing Party**") Confidential Information to the other Party (the "**Receiving Party**") then the Receiving Party shall treat as confidential all Confidential Information of the Disclosing Party under the Contract. The Receiving Party shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees who need to know it for the Permitted Purposes. The Receiving Party shall ensure that its employees are aware of, and comply with, this clause 13.
- 13.3. The restrictions imposed by clause 13.1 and clause 13.2 shall not apply to the disclosure of any Confidential Information which:
- 13.3.1. is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 13;
- 13.3.2. before any negotiations or discussions leading to the Contract was already known by the Receiving Party and was obtained or acquired in circumstances under which the receiving party was not bound by any form of confidentiality obligation; or
- 13.3.3. is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the Disclosing Party to limit disclosure to such authorised person to the extent necessary).
- 13.4. Each Party shall notify the other Party if it becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other Party, at that other Party's reasonable cost, in connection with any enforcement proceedings which that other Party may elect to bring against any person.
- 13.5. This clause 13 shall remain in full force and effect, despite any termination of the Contract.
14. **Entire Agreement**
- 14.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representations, assurance or warrant (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract and RSD.
- 14.3. Nothing in this clause shall limit or exclude any liability for fraud.
15. **Variation**
- 15.1. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
16. **Waiver**
- 16.1. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise
- of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
17. **Severance**
- 17.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or partprovision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
18. **Notices**
- 18.1. 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 or recorded delivery or by commercial courier.
19. **Governing Law**
- 19.1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of Scotland.
20. **Jurisdiction**
- 20.1. The Parties irrevocably agree that the courts of Scotland shall 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 non-contractual disputes or claims).