

Professional Services Agreement (PSA) Terms and Conditions

The following constitute the Terms and Conditions under which Sapphire Technologies Ltd trading as "Sapphire" supplies Professional Services. These conditions, in conjunction with the details as shown on the Professional Services Agreement and any associated technical documentation represent the totality of the agreement and form the Contract between Sapphire and The Customer. Any agreed variation or alteration to part of these Terms and Conditions as annexed to this Contract will not invalidate the remainder or the whole. Any alteration or addition to the Service specified in the Professional Services Agreement will require to be the subject of a new Professional Services Agreement. Sapphire reserves the right to suspend services if The Customer fails to adhere to any or several conditions of this Contract.

1. Definitions

In these Terms and Conditions the following words and phrases shall have the following meanings unless the context otherwise requires:

"Agreement" – the contract between the parties specified in this document and any other documents attached as appendices or addendums to this document.

"Effective Date" – the date upon which the Agreement comes into force.

"Service" – the service to be provided by us to you as described in the Professional Services Agreement and any associated technical documentation.

"Equipment" – any computer equipment operated, recommended or chosen by us in connection with the provision of the Service

"Professional Services Agreement" – The document/quotation/specification containing the description of the Service to be provided by us to you and the applicable fees to be paid by you; each Professional Services Agreement shall be governed by these Terms and Conditions

"Charges" – the charges to be paid by you for the Service as specified in the Professional Services Agreement.

"Milestone" – a pre-determined stage of the Service defined in the Professional Services Agreement.

"Core Function" – the primary task to be achieved by any technical solution or recommendation created as part of the Service.

"Modification" – a change or alteration to a technical solution or recommendation created as part of the Service which is necessary to enable that solution or recommendation to carry out its Core Function.

"Update" – a change or alteration to a technical solution or recommendation which serves to enhance that solution or recommendation functionally or visually but is not required to enable the solution to carry out its Core Function.

2. Provision of Services

- 2.1. **Sapphire** ("We") will provide to **The Customer** ("You") the Service as described in the Professional Services Agreement subject to these Terms and Conditions. Where the Professional Services Agreement conflicts with these Terms and Conditions the latter shall take precedence.
- 2.2. We will perform the Service as specified in the Professional Services Agreement and any associated technical documentation. We reserve the right to amend the technical specification as required for technical or operational reasons provided always that the Core Function of any part of the Service shall remain materially unaffected. We shall consult You before taking any such action.
- 2.3. You agree to provide in good time all material technical or otherwise including but not limited to hardware, software, personnel resources or other information identified as being provided by you in the Professional Services Agreement and necessary for the progress or completion of the Service. We accept no liability whatsoever for delay to the Service caused by your failure to meet your obligations under this clause.
- 2.4. We will use all reasonable endeavours to adhere to any dates proposed by either party for the provision of the Service, however any such date is to be treated as an estimate only and we accept no liability for failure to meet such dates. For the purposes of this Agreement, time is not considered to be of the essence.

3. Acceptance of Procedures

- 3.1. Where Milestones are specified in the Professional Services Agreement such Milestones shall be accepted by You before continuation of the Service to the next Milestone. Acceptance shall be deemed to take place when the Milestone has passed any acceptance test defined in the Professional Services Agreement.
- 3.2. Where an acceptance test is not defined you agree that your acceptance of a Milestone shall not be unreasonably withheld.
- 3.3. In the event that Milestones are not defined acceptance is deemed to take place upon completion of the Service.
- 3.4. In the event that a dispute exists between us as to any part of the Service such dispute shall be subject to Clause 19 of this Agreement.
- 3.5. In the event that acceptance tests are delayed due to any act or omission on your part, we may give 14 days notice of our requirement that the tests shall be carried out. If such tests are not then carried out within a further period of 14 days due to

continuing acts or omissions on your part, the Milestone shall then be deemed to have been accepted on the expiry of such further period.

4. Charges and Payment

- 4.1. All Charges payable by You for the Service shall be in accordance with the Professional Services Agreement based on our standard scale of charges and rates published from time to time.
- 4.2. All charges published by us are exclusive of VAT unless specified otherwise.
- 4.3. Where the Professional Services Agreement specifies payment on receipt of invoice, such payment is to be received by us not less than 14 days from the date of invoice. If the payment in question is not received on or before the due date we reserve the right to immediately withdraw, suspend or limit the Service and levy interest on a daily basis on any outstanding payment balance at the rate of 2% above the base lending rate of Barclays Bank plc in force from time to time.
- 4.4. Where payment falls due on the completion of a Milestone such payment shall be made in accordance with clause 4.3

5. Cancellation

- 5.1. Sapphire reserve the right to invoice in full any job cancelled or deferred within 21 working days of the scheduled delivery/start date according to the following schedule.
- 5.2. Cancelled/deferred between 10 and 21 days will be subject to an invoice of 50% (or 5 days consultancy if smaller) of the total job value.
- 5.3. Cancelled/deferred less than 10 will be subject to an invoice of 100% (or 5 days consultancy if smaller) of the total job value.
- 5.4. All time used/spent on the project will be invoiced (plus associated expenses including travel and accommodation). This time will be deducted from the overall time allocated to the project and may necessitate a further purchase order being raised to cover the projected shortfall in allocated days.

6. Default

- 6.1. If you fail to pay the Charges in accordance with the provisions of clause 3-5 of this Agreement, or break this Agreement in any other way, or are subject to bankruptcy or insolvency proceedings, we may (without prejudicing, losing or reducing any other right or remedy) suspend or terminate the Service at our discretion. Notwithstanding such action you shall remain liable for all charges falling due under this Agreement.
- 6.2. Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure: or in the case of a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.
- 6.3. On termination of this Agreement we shall be entitled, at our discretion, to delete any data supplied by you unless we receive a written request within one month of the date of termination of your intention to collect any such data at your expense, subject to payment in full of any amounts withstanding and payable to us.
- 6.4. We may, at our sole discretion, waive a breach of this Agreement by you; in this case waiver is limited to the particular breach and has no effect on the validity of the remainder of this Agreement. Any delay by us in acting upon a breach is not to be regarded in itself as a waiver.

7. Termination of Service

- 7.1. This Agreement may be terminated by either party on giving at least 30 days notice to the other. If we give notice you shall be liable to pay all charges up to the expiry of the notice. If you give notice, you shall be liable to pay all charges until 30 days after the date we receive the notice or until expiry of the notice, whichever is the latter. Your service of notice does not avoid any other liability for Service already provided. You shall be entitled to any data or work in progress created in relation to the Service up to the date of termination unless notice is served as a result of a breach of this Agreement by you in which case all rights to such data or work in progress remain with us.

8. Notices

- 8.1. Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

9. Force Majeure

- 9.1. We are not liable for any breach of this Agreement due to any cause beyond our reasonable control including but not limited to Acts of God, war, civil disorder, flood, lightning or fire, industrial disputes, inclement weather, acts or omissions of local or central government, other competent authorities or any third party over whom we are not responsible including failure by other service providers.

10. Warranties

- 10.1. In performing our obligations under this Agreement, we will exercise the reasonable care and skill of a competent Information Technology Consultancy.
- 10.2. We warrant that the Core Function of any technical solution developed by us under the Service will be of satisfactory quality and fit for purpose as defined in the Professional Services Agreement for a period of three months following the completion of the Service.

- 10.3. Where on completion of the Service and for a period of three months thereafter a Modification is required and such Modification is not as a result of third party action and/or events or circumstances beyond our direct control we agree to carry out such Modification free of charge. We reserve the right to final determination of whether a Modification is required under this clause.
- 10.4. Where such Modification is required other than under the circumstances in clause 10.3, we accept no liability or responsibility to carry out such Modification under this Agreement.
- 10.5. We accept no liability or responsibility to Update any technical solution created or designed by us in relation to the Service. An Update service may be provided as part of a separate Agreement between us.

11. Product Returns

- 11.1. The Customer shall obtain a Returns Authorisation Number from Sapphire prior to hardware or software being returned.
- 11.2. Sapphire may refuse to issue a Returns Authorisation Number at its sole discretion.
- 11.3. The customer shall notify Sapphire of any hardware or software which it wishes to be returned within seven days of receipt of that hardware or software.
- 11.4. The customer shall be responsible for packaging returned hardware and software correctly.
- 11.5. Credit or refund shall only be given if the hardware or software is received by Sapphire in a saleable condition.

12. Liabilities

- 12.1. We make no attempt to restrict liability for death or personal injury caused as a result of the act or omission of our employees agents or representatives.
- 12.2. We shall not be liable under Contract, Tort or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever, or the acts or omissions of other third parties involved in the provision of the Service.
- 12.3. We make no warranties other than in clause 10 as regards the Service and will not be responsible for any damage allegedly suffered or claimed by you for any reason.
- 12.4. All conditions, terms, representations and warranties relating to the Services supplied under this Agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, subject always to sub-clause 12.1.
- 12.5. Our total aggregate liability to you for any claim in Contract, Tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim.
- 12.6. In any event no claim shall be brought unless you have notified us of the claim within one year of it arising.

13. Indemnity

- 13.1. You agree to indemnify and keep us indemnified against any claim or consequence arising in relation to the Service, including but not limited to infringement of any intellectual property right of any kind, legislation, regulation or contract. You will pay all costs, damages, awards, fees (including reasonable legal fees) and judgments finally awarded against us arising from such claims, and will provide us with notice of such claims, full authority to defend, compromise or settle such claims and all reasonable assistance necessary to defend such claims, at your sole expense.

14. Intellectual Property Rights

- 14.1. You shall obtain any and all necessary consents and permissions in relation to any and all third party intellectual property rights used in relation to the Service.
- 14.2. We may at our discretion require you to produce to our satisfaction documentary or other conclusive evidence of your right to the legitimate use of any third party intellectual property rights in relation to the Service.
- 14.3. You agree to indemnify us in accordance with clause 13 of this agreement against any actions howsoever brought against Sapphire for breach of any third party intellectual property right in relation to the Service.
- 14.4. All intellectual property rights created during the course of the Service other than pre-existing rights in material supplied by you shall remain solely vested in us.

15. Source Code

- 15.1. We may, on receipt of a written request from you, provide a copy of the source code of any software program or application created by us in relation to the Service.
- 15.2. In the event that We shall become bankrupt or go into liquidation, other than a voluntary liquidation for the purpose of reconstruction or amalgamation, we shall, insofar as is permitted to do so by law, provide to you at no additional charge a copy of the source code of any software program or application created by us in relation to the Service.
- 15.3. Where source code is provided under this section, its use shall be restricted to the purpose of maintaining the software program or application unless express written authorisation is received from us permitting further uses.

16. Data Protection

- 16.1. You agree that we may retain details obtained during the sales process for internal administration purposes and/or marketing purposes unless we receive specific written notification to the contrary.

17. Retention of Title

- 17.1. Any goods supplied shall remain the property of Sapphire until the purchase price for the goods and services has been paid in full.

18. Assignment

- 18.1. You will not assign, re-sell, sub-lease or in any other way transfer the Service (or any element thereof), or any of your rights or obligations under the terms of this Agreement without our express written permission. Contravention of this restriction in any way, whether successful or not, will entitle us to terminate the Service and/or the Agreement immediately in accordance with clause 7.
- 18.2. We reserve the right to assign all or part of this Agreement at any time to any subsidiary or associate company.

19. Arbitration

- 19.1. Any dispute or difference which may arise between us in connection with the Service or arising out of the licence may, by agreement of both parties, be resolved by arbitration, in which event such dispute or difference shall be referred to a single arbitrator to be agreed between us or, failing such agreement within fourteen days, to be nominated by the President for the time being of the British Computer Society.

20. Recruitment of Personnel

- 20.1. Each party undertakes not to attempt to solicit or procure the services of staff employed by the other party who are involved in the performance of this contract during the course of this contract and for a period of six months thereafter without the written permission of the other party.
- 20.2. The Customer agrees to pay Sapphire a 'finders fee' should The Customer recruit a Sapphire consultant to a paid employment position within two years of the conclusion of any work on behalf of The Customer by that Consultant or of that Consultant being introduced to The Customer whichever is the later.
- 20.3. In respect of this clause, the definition of 'Consultant' shall include all Sapphire employees and associates that are involved in the provision of services to the Customer under this or any other contract.
- 20.4. The 'finders fee' shall be 30% of the first year's gross remuneration payable by The Customer or its associates to the Consultant.

21. Jurisdiction

- 21.1. This Agreement shall be governed by and construed in accordance with English law and The Customer hereby submits to the exclusive jurisdiction of the English courts.

22. Headings

- 22.1. Headings are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

23. Entire Agreement

- 23.1. These terms and conditions together with any documents expressly referred to in them, contain the entire Agreement between us relating to the subject matter covered and supersedes any previous Agreements, arrangements, undertakings or proposals, written or oral, between us in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation, which has not been made expressly in this Agreement.