

## Consultancy Agreement

These terms and conditions ('Terms') govern HUMAN INTERFACE LIMITED ('the Consultant' provision of Services to its clients ('You/Your').

### 1. Definitions

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

**'Business Day'**

a day (other than a Saturday or Sunday) on which the clearing banks are open for business in the City of London;

**'Commencement Date'**

the date set out in the Schedule;

**'Completion'**

the actual completion of the provision of the Services in accordance with these Terms;

**'Confidential Information'**

all information passing from one party to the other party (whether disclosed before or after the date of this Agreement) relating to the business of the disclosing party, including but not limited to trade secrets, drawings, know-how, techniques, source and object code, business and marketing plans and projections, arrangements and agreements with third parties, customer information and customer information proprietary to customers, formulae, suppliers, concepts not reduced to material form, designs, plans and models;

**'Consultant'**

the personnel allocated by the Consultant to carry out the Services;

**'Services'**

the Services to be provided by the Consultant to You in accordance with the specification as set out in writing;

**'Fees'**

the fees of the Consultant for the provision of the Services as specified in the Schedule together with any other charges including Further Fees made pursuant to these Terms;

**'Further Fees'**

the additional fees of the Consultant as specified by the Consultant's standard price tariff published from time to time;

**'Intellectual Property'**

all intellectual property rights anywhere in the world (including present and future intellectual property rights) relating to any Confidential Information, business names and logos, copyright, database rights, patents, trade or service marks, designs, software, computer data, generic rights, software programmes and source code and all variations, modifications or enhancements to each of them together with any application or right to apply for registration or protection of those rights;

**'Server'**

any Internet server owned or operated by or on behalf of the Consultant;

**'Terms'**

the terms of this Agreement.

**'Web Page'**

each individual screen display on Your Website;

**'Website'**

a website designed by the Consultant at which text, graphics, data, files and information are stored electronically on Web Pages and Server and access to which is made available to third parties via the Internet; and

**'Web Space'**

the agreed amount of space including an allocation of storage space on a Server.

1.2 Unless the context otherwise requires references to clauses and the Schedule shall be construed as references to clauses and the Schedule of these Terms.

- 1.3 Headings are inserted for convenience only and shall not affect the construction or interpretation of these Terms.

## **2. The Services**

- 2.1 In consideration of You paying to the Consultant the Fees in accordance with the provisions of clause 6 and the Schedule the Consultant shall provide the Services. Any changes or additions to the Services must be agreed in writing by the Consultant.
- 2.2 Time shall not be of the essence in the performance of the Consultant's obligations under these Terms.

## **3. Your Obligations with respect to the Services**

- 3.1 Before the Commencement Date You shall at Your expense supply the Consultant with all necessary documents including the duly completed specification together with all software or other materials, and all necessary data or other information relating to the Services as the Consultant may reasonably request ('Items'), within sufficient time as required to enable the Consultant to provide the Services in accordance with these Terms. You shall ensure the accuracy and completeness of all such Items.
- 3.2 You shall be responsible for retaining Your own copies of all Items provided to the Consultant and for insurance against their accidental loss or damage. The Consultant shall in no circumstances be liable for any loss of or damage to the Items however caused. You shall provide the Consultant such access to Your information, records and other material as the Consultant may require to provide the Services and You shall make available to the Consultant appropriate personnel to liaise with the Consultant to enable the Consultant to properly perform its obligations under these Terms.
- 3.3 When publicly displaying the Website and where requested by the Consultant, You shall include an acknowledgement as set out in the Schedule or any other form of acknowledgement notified to You.
- 3.4 You shall, without prejudice to any other right of action which the Consultant may have, at all times keep the Consultant fully and effectively indemnified against any liability (which liability shall include, without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other fees and expenses on a full indemnity basis) which the Consultant may suffer or incur as a result of, or by reason of, any breach or non-fulfilment of any of Your obligations under these Terms.
- 3.5 You will be required to sign off various parts of the Services. The Consultant will not be liable for any errors or mistakes signed off by you even if those errors or mistakes would have been apparent to the Consultant.

## **4. The Consultant's Rights and Obligations with respect to the Services**

- 4.1 The Consultant reserves the right to make any changes to the Services which are necessary to comply with any applicable safety, security or other statutory requirements, or which do not materially affect the nature or quality of the Services, without notice to You.
- 4.2 The Consultant shall be entitled in its absolute discretion to decide the number of and which of its employees shall provide the Services as the Consultant on the Consultant's behalf.
- 4.3 Copyright to the assembled work of the Design Service produced by the Consultant is owned by the Consultant and shall remain in the ownership of the Consultant.
- 4.4 The Consultant reserves the right to make all amendments to or prepare any derivative works from the Services which are required by You after the completion of the Services and You shall not have the right to make any changes or alterations to such Services. These amendments shall be made pursuant to Your instructions and the Consultant shall have the right to charge You the appropriate Further Fee.
- 4.5 The Consultant and You expressly acknowledge and agree that in performance of the Services, the Consultant is an independent contractor and not an employee partner, joint author or joint venturer of You.

## **5. Domain Name**

- 5.1 You warrant that You are the sole owner of, or are duly authorised by the owner to use, any trade mark or name requested or allocated as the domain name of any Website and further that, neither its use or registration constitutes or will constitute an infringement of any third party's Intellectual Property rights.
- 5.2 You shall, without prejudice to any other right of action which the Consultant may have, at all times keep the Consultant fully and effectively indemnified against any liability (which liability shall include,

without limitation, all losses, costs, claims, expenses, demands, actions, damages, legal and other fees and expenses on a full indemnity basis) which the Consultant may suffer or incur as a result of, or by reason of, any breach of the warranty.

## **6. Fees**

- 6.1 Subject to these Terms, the Consultant shall be entitled to invoice the Fees to You for the relevant Services as stated in the Schedule and subsequently to invoice any Further Fees to You. You shall pay the Fees and any Further Fees due and any additional sums without any set off or other deduction. You may elect to receive either email or paper invoices. The Consultant, in its sole discretion, will be entitled to charge fees in addition to the Fees as a result of Your instructions or lack of instructions, the inaccuracy of any Items or any other cause attributable to You.
- 6.2 All charges of the Consultant are exclusive of any Value Added Tax, other sales tax, or withholding tax for which You shall be additionally liable at the applicable rate from time to time.
- 6.3 If payment is not made within thirty (30) days of the due date, the Consultant shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount both before and after any judgement at a monthly rate of three (3) per cent of the total amount due and such interest shall accrue from the due date until the outstanding amount is paid in full, and further, to recover from You all reasonable expenses incurred by the Consultant in recovering the Fees and any interest incurred including legal fees and costs for collection by third party agencies.
- 6.4 The Consultant may require staged payments to be made. The Consultant may decline to carry out any more work until each staged payment has been made.

## **7. Intellectual Property**

- 7.1 Save as otherwise provided, any Intellectual Property in any Items or materials provided by You shall belong to You, and the Intellectual Property in any software, specifications, material, procedures, data or Intellectual Property of the Consultant used in the preparation of or which is embedded within the material produced or provided by the Consultant ('Output Material') shall remain the property of the Consultant.
- 7.2 In consideration of You paying to the Consultant the Fees the Consultant grants to You a non-exclusive, non-transferable licence to use all and any of the Consultant's Design Service in the Output Material only in conjunction with the licence granted hereunder (and any renewal of the licence).
- 7.3 You warrant that any Items, material or data provided by You and their use by the Consultant for the purpose of providing the Services will not infringe the Intellectual Property rights of any third party, and You shall indemnify the Consultant (on a full indemnity basis) against any loss, damages, costs, expenses or other claims arising from any such infringement.

## **8. Confidential Information**

- 8.1 Each party may use the Confidential Information of a disclosing party only for the purposes of these Terms and must keep confidential all Confidential Information of the disclosing party except as provided in this clause 8.
- 8.2 Either party may disclose Confidential Information of the other party to those of its employees and agents (including professional advisers) who have a need to know the Confidential Information for the purposes of these Terms but only if the employee or agent executes a confidentiality undertaking in a form approved by the other party.
- 8.3 All documents and other materials containing Confidential Information of either party will be returned to that party immediately upon Completion of the Services.
- 8.4 The parties' obligations to keep information confidential will survive the termination of these Terms.
- 8.5 The obligations of confidentiality under these Terms do not extend to information that:
  - 8.5.1 was rightfully in the possession of the receiving party before the negotiations leading to these Terms;
  - 8.5.2 is, or after the day these Terms are signed, becomes public knowledge (otherwise than as a result of a breach of these Terms); or
  - 8.5.3 is required by law to be disclosed.

## **9. Non-solicitation**

You undertake to the Consultant that during the currency of these Terms and for a period of six (6) months following termination for whatever reason You will not directly or indirectly (whether or through Your agent or otherwise and whether for yourself or for the benefit of any other person) employ any officer or employee of the Consultant directly or indirectly involved in the provision of the Services or induce or endeavour to induce any officer or employee of the Consultant directly involved in the provision of the Services to leave his or her employment.

## **10. Warranties and liability**

- 10.1 The Consultant warrants to You that the Services will be provided using reasonable care and skill. Where the Consultant supplies in connection with the provision of the Services any goods (including Output Material) or services supplied by a third party, the Consultant does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to You the benefit of any warranty, guarantee or indemnity given by the person supplying the goods or services to the Consultant.
- 10.2 With the exception of any rights which You may have under applicable law all warranties, conditions and other terms implied by statute or common law are excluded from these Terms to the fullest extent permitted by law.
- 10.3 Nothing in these Terms excludes or limits the liability of the Consultant for fraud or for death or personal injury caused by the Consultant's negligence.
- 10.4 The Consultant shall have no liability to You for any loss, damage, costs, expenses or other claims for compensation arising from any Items or instructions supplied by You which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the incorrect form, or arising from their late arrival or non-arrival, or any other fault of You.
- 10.5 The Consultant shall have no liability to You for any loss, damage, costs, expenses or other claims for compensation arising from any exercise of the Consultant's rights or remedies under these Terms including without limitation the suspension of access to Your Website or deletion, corruption, loss or removal of data, files or material stored on Your Website or removal of Your Website from the Server.
- 10.6 Subject to section 10:
  - 10.6.1 the Consultant's total liability in contract, tort, (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Services shall be limited to the total value of the Services; and
  - 10.6.2 in no event shall the Consultant be liable to You whether arising under these Terms or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, for any Consequential Loss. 'Consequential Loss' shall for these purposes mean (i) pure economic loss (ii) losses incurred by any third party (iii) loss of profits (whether categorised as direct or indirect) (iv) losses arising from business interruption (v) loss of business revenue, goodwill, anticipated savings (vi) losses whether or not occurring in the normal course of business, wasted management or staff time (vii) loss or corruption of data.
- 10.7 You warrant that you have the right to enter into this Agreement having obtained all necessary approvals or consents.

## **11. Termination**

- 11.1 These Terms shall come into force upon receipt by the Consultant of Your purchase order together with a signed copy of these Terms in respect of the Services or by any other method specified under these Terms or agreed with You and shall (unless terminated earlier by either party) continue in force until Completion.
- 11.2 These Terms may be terminated by either party immediately:
  - 11.2.1 If the other party breaches any provision of these Terms and fails to remedy the breach within fourteen (14) days after receiving a written notice from the non defaulting party requiring it to remedy the breach; or
  - 11.2.2 by written notice from the non defaulting party to the defaulting party if the defaulting party breaches a material provision of these Terms and that breach is not capable of being remedied.
- 11.3 A party will be deemed to be in fault of these Terms if:

- 11.3.1 that party disposes of the whole or part of its business, operations or business other than in the ordinary course of business;
  - 11.3.2 that party ceases to carry on business;
  - 11.3.3 that party ceases to be able to pay its debts as they become due;
  - 11.3.4 that party passes a resolution, or a court makes an order that the party be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation;
  - 11.3.5 that party shall have an administrator appointed or documents filed with the court in respect of such appointment or notice is served of an intention to appoint an administrator by that party or its directors or by a qualifying floating charge holder as provided in the *Insolvency Act 1986*, paragraph 14 Schedule B1.
  - 11.3.6 a receiver, manager encumbrancer or other similar official on behalf of a creditor is appointed in respect of the business or any part thereof of that party;
  - 11.3.7 that party is unable to pay its debts within the meaning of section 123 of the *Insolvency Act 1986*; or
  - 11.3.8 any similar event occurs under the law of any other jurisdiction in respect of that party.
- 11.4 Any termination of these Terms shall be without prejudice to any other rights or remedies a party may be entitled to under these Terms or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision thereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.5 Upon termination of these Terms for whatever reason:
- 11.5.1 all outstanding Fees and expenses owed by You to the Consultant shall immediately become due and payable; and
  - 11.5.2 subject as otherwise provided by these Terms to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under these Terms.

## **12. Force Majeure and Miscellaneous**

- 12.1 Except with respect to obligations to pay the Fees or other charges, '**Force Majeure**' means anything outside the reasonable control of a party, including but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, including without limitation where the Consultant ceases to be entitled to access the Internet for whatever reason, server crashes, deletion, corruption, loss or removal of data, transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.
- 12.2 If a party is wholly or partially precluded from complying with its obligations under these Terms by Force Majeure, then that party's obligation to perform in accordance with these Terms will be suspended for the duration of the Force Majeure.
- 12.3 As soon as reasonably practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under this Agreement.
- 12.4 This Agreement is subject to English law and the parties agree to submit to the English Courts.
- 12.5 The rights of Third Parties Act are expressly excluded from this Agreement.