

Terms and Conditions

Provision of Services

1. Interpretation

1.1 Definitions:

Bailoy: Bailoy Products Limited registered under number 01196370, whose registered office is at The Old Forge, High Street, Harmondsworth, Middlesex UB7 0AQ

Bailoy IPRs: all Intellectual Property Rights subsisting in the Deliverables excluding any Customer Materials incorporated in them.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services by Bailoy, as set out in the Order Confirmation.

Contract: the contract between the Customer and Bailoy for the supply of the Services in accordance with these Conditions.

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 Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to Bailoy.

Deliverables: all documents, products and materials developed by Bailoy or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) 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 which subsist or will subsist now or in the future in any part of the world.

Order Confirmation: the confirmation of the Services ordered by the Customer setting out details of charges.

Services: the services, including without limitation any Deliverables, to be provided by Bailoy pursuant to the Contract, as described in the Order Confirmation and /or the Support Agreement. .

Services Start Date: the date Bailoy commence the supply of services to the Customer.

Support Agreement: an agreement documenting the Services offered which may be entered into between Bailoy and the Customer.

1.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. Commencement and term

2.1 The Contract shall commence on the date when it has been signed by both parties or on the Services Start Date and shall continue for term set out in either the Order Confirmation or the Support Agreement (as the case may be).

3. Supply of services

3.1 In the event of any conflict or discrepancy between these terms and the Order Confirmation and / or the Support Agreement, these terms shall prevail.

3.2 Bailoy shall supply the Services to the Customer from the Services Start Date in accordance with these terms.

3.3 In supplying the Services, Bailoy shall:

- (a) perform the Services with reasonable care and skill;
- (b) use reasonable endeavours to perform the Services in accordance with the service description set out in the Support Agreement;
- (c) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of satisfactory quality and are fit for purpose;
- (d) comply with all applicable laws, statutes and regulations from time to time in force (provided that Bailoy shall not be liable under the Contract if, as a result of such compliance, it is in breach of any of its obligations under the Contract);
- (e) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Customer's premises and have been communicated to Bailoy, provided that Bailoy shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract; and

- (f) take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, always provided that Bailoy may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after termination of the Contract.

3.4 Bailoy shall be under no obligation to rectify pre-existing faults or defects which may come to light during the provision of the Services. Additional fees for these repairs and / or assistance may be proposed by Bailoy.

4. Customer's obligations

4.1 The Customer shall:

- (a) co-operate with Bailoy in all matters relating to the Services;
- (b) provide, for Bailoy, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by Bailoy;
- (c) where appropriate, provide Bailoy with an authorised site representative to facilitate Bailoy's work at the Customer's site;
- (d) provide, in a timely manner, such information as Bailoy may reasonably require, and ensure that it is accurate and complete in all material respects;
- (e) follow Bailoy's instructions in relation to safe and effective usage of any equipment provided by Bailoy in connection with the Services; and
- (f) ensure that any computer system provided by Bailoy is used strictly in accordance with any instructions or specification provided by Bailoy.

4.2 If Bailoy's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, Bailoy shall:

- (a) not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
- (b) be entitled to payment of the Charges despite any such prevention or delay; and
- (c) be entitled to recover any additional costs, charges or losses Bailoy sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Intellectual property

5.1 Bailoy and its licensors shall retain ownership of all Bailoy IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

5.2 Bailoy grants the Customer or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy Bailoy IPRs for the purpose of receiving

and using the Services and the Deliverables in the Customer's business during the term of the Contract.

5.3 The Customer grants Bailoy a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

5.4 The Customer shall indemnify Bailoy in full against any sums awarded by a court against Bailoy arising of or in connection with any claim brought against Bailoy for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by Bailoy.

6. Charges and payment

6.1 In consideration for the provision of the Services, the Customer shall pay Bailoy the Charges in accordance with this clause 6.

6.2 All amounts payable by the Customer exclude amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to Bailoy at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

6.3 Where applicable, Bailoy shall submit invoices for any ongoing Charges plus VAT to the Customer monthly. Each invoice shall include all reasonable supporting information required by the Customer.

6.4 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Bailoy. Time for payment is of the essence.

6.5 If the Customer fails to make any payment due to Bailoy under the Contract by the due date for payment, then, without limiting Bailoy's remedies under clause 8_(Termination):

(a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above HSBC's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

(b) Bailoy may suspend all Services until payment has been made in full.

6.6 All amounts due under the Contract from the Customer to Bailoy shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Limitation of liability

7.1 Nothing in the Contract shall limit or exclude Bailoy's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, Bailoy shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

7.3 Subject to clause 7.1, Bailoy's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the greater of £10,000 and 75 per cent (75%) of the average annual Charges (calculated by reference to the Charges in successive 12-month periods from the Services Start Date) paid by the Customer under the Contract.

7.4 Subject to clause 7.1, Bailoy shall have no liability to a Customer for any loss or damages suffered as a result of the Customer (or the Customer's employee, contractor or representative) using any equipment provided in connection with the Services otherwise than in accordance with Bailoy's instructions.

7.5 The conditions implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

7.6 Bailoy shall have no liability in connection with the loss of any of the Customer's data where such data is stored on a customer's computer running Bailoy's GTI software or any computer system provided by Bailoy or in connection with the Customer's use of any conflicting software or programmes (including but not limited to anti-virus software or networking programmes).

8. Termination

8.1 Without affecting any other right or remedy available to it, either party to the Contract may terminate it with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without affecting any other right or remedy available to it, Bailoy may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

8.3 On termination of the Contract for whatever reason:

- (a) the Customer shall immediately pay to Bailoy all of Bailoy's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Bailoy may submit an invoice, which shall be payable immediately on receipt;
- (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and
- (c) termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9. General

9.1 Force majeure. 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 its reasonable control.

9.2 Assignment and other dealings.

- (a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without Bailoy's prior written consent.
- (b) Bailoy may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

9.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 9.3.
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 9.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use any other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4 Entire agreement.

- (a) 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (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 [or negligent misstatement] based on any statement in the Contract.

9.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6 Waiver.

- (a) 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.
- (b) 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.

9.7 Severance. 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 part-provision 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.

9.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be: delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Support Agreement or Order Confirmation.
- (b) A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, on the next Business Day after transmission.
- (c) This clause shall not apply to the service of any proceedings or other documents in any legal action.

9.9 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

9.10 Governing law. 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 England and Wales.

9.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.