

THIS AGREEMENT made at the time and date of order confirmation.

PARTIES

SUBNETRO LIMITED of [16 The Boundaries, Lympham, BS24 0DF] ("Technical Consultant")
And

THE CLIENT [As defined on the order/instruction document]

IT IS NOW AGREED as follows:

The Technical Consultant provides support, equipment, digital infrastructure, interface design and other services in relation to the Internet, telecommunications networking and world-wide web (hereinafter together termed 'WWW'). The Client wishes the Technical Consultant to design a solution and/or software/web application using modern technologies with optional, if agreed, support and maintenance schedule. The services are to be provided on the terms and conditions set out in this Agreement.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1. In this Agreement the following expressions shall apply (save where the context otherwise requires):

1.1.1. "Billing Rates" means the Technical Consultant's charges from time to time as notified plus the cost of any materials provided.

1.1.2. "Client Senior Representative" means a member of the Client's management as notified to the Technical Consultant.

1.1.3. "Subnetro Senior Representative" means a member of the Technical Consultant's management as notified to the Client.

1.1.4. "Intellectual Property Rights" means all copyrights, domain names, patents, database rights, registered and unregistered design rights, trademarks and service marks, applications and equipment for any of the foregoing, together with all trade secrets, know-how, rights to confidence and other intellectual and industrial property rights in all parts of the world.

1.1.5. "Milestone" means the completion of an element of the Project as set out in the Project Schedule.

1.1.6. "Project" means the plan and list of changes as instructed by the client.

1.1.7. "Project Price" means the cost of the Project as stated in the Project Schedule.

1.1.8. "Specification" means the document attached to the Project Specification subject to any Specification Addenda.

1.1.9. "Specification Addendum" means an amendment to the Project Specification agreed by the parties in writing pursuant to Clause 10 below.

1.1.10. "Third Party Copyright" means Intellectual Property Rights owned by third parties in software/hardware used by the Technical Consultant in creation of the solution/interface as may be identified in more detail in the project Schedule.

1.1.11. "Solution" means a compilation of one or more items developed by the Technical Consultant pursuant to the Specification.

2. THE AGREEMENT

2.1. In consideration of the Technical Consultant developing and supplying the solution for the Client, the Client shall pay the Project Price to the Technical Consultant in accordance with the Project Schedule.

3. PRICE PAYMENT AND CANCELLATION

3.1. Project Price is exclusive of VAT.

3.2. Any products or services not expressly provided for in this Agreement (including but not limited to making the Solution available for access and the maintenance) shall be chargeable on a time and materials basis in accordance with the Billing Rates.

3.3. Payment will be due at the Milestones as indicated in the Project Schedule.

3.4. Subject to contrary provision in the Schedules, the Client agrees to pay any invoice arising from this Agreement within 14 days of the invoice date.

3.5. If the Client fails to pay any invoice in accordance with Clauses 3.3 and 3.4 above, the Technical Consultant shall be entitled to charge interest on a daily basis on any sums outstanding from the invoice date until payment (both before and after judgement) at an annual rate 4% above the Base Rate for the time being in force of NatWest Bank or at the statutory judgement rate as applicable.

3.6. Non-delivery or non-performance of services by any third party other than the Technical Consultant's agents in relation to the Project or any part thereof shall not give the Client any right to delay any payment to the Technical Consultant or to make any claim whatsoever against the Technical Consultant.

3.7. The Technical Consultant shall be entitled to suspend the Project or any part thereof until arrangements as to credit or payment to the satisfaction of the Technical Consultant have been made.

3.8. The Technical Consultant shall be entitled to treat the agreement as having been repudiated by the Client in the event that: -

3.8.1. Payment of any element of the Project Price is not received by the due date;

3.8.2. Or the Client fails to pay any other sum due to the Technical Consultant under this Agreement;

3.8.3. Or the Client breaches a term of this agreement and such breach is irremediable, or, if remediable, is not remedied to the Technical Consultant's satisfaction within 7 days of notice to remedy such breach.

3.9. For the purposes of this agreement, time of payment shall be of the essence.

4. THE CLIENT'S OBLIGATIONS

4.1. The Client undertakes to secure copyright and other appropriate licences or consents where necessary for the inclusion of any material, data and information provided to the Technical Consultant pursuant hereto to enable the Technical Consultant to incorporate such material, data and information into the solution.

4.2. The Client undertakes that it will provide or procure the provision of the information, data and material required for the purposes hereof by the Technical Consultant in whatever formats and timescales agreed by the parties and set out in the Specification.

4.3. The Client undertakes to pay all taxes, fees, levies and duties whether for import or otherwise arising in any part of the world in connection with the solution.

4.4. The Client undertakes to keep secure from third parties any passwords issued to the Client by the Technical Consultant in connection herewith.

4.5. The Client undertakes fully to virus-check all data supplied to the Technical Consultant pursuant to this agreement.

4.6. In the event that the Client wishes to enter into a maintenance agreement with a third party after completion of the solution, the Client undertakes to enter into appropriate licences with owners of Third-Party Copyright as notified by the Technical Consultant and to meet associated costs.

4.7. The Client undertakes that during acceptance testing of the solution, it will conduct all such tests as are necessary to satisfy itself that the solution conforms to the Specification.

5. INTELLECTUAL PROPERTY AND INDEMNITIES

5.1. The Client shall immediately bring to the attention of the Technical Consultant any infringement or suspected infringement by any third party of any of the Technical Consultant's intellectual Property Rights or Third-Party Copyright of which it is or becomes aware and shall at the request and expense of the Technical Consultant take such action or assist the Technical Consultant in taking such action as the Technical Consultant may deem appropriate to protect the Intellectual Property Rights.

5.2. The Client agrees to indemnify the Technical Consultant against all damages, liabilities, costs and expenses which the Technical Consultant may incur or sustain including the costs of defending any suit arising from the use of any material or data provided by or on behalf of the Client pursuant hereto and in respect of the consequences of failure to comply with the terms of Clause 4.6 or to abide by the terms of licences granted in respect of Third Party Copyright.

5.3. The Client hereby grants licences and consents to the Technical Consultant without charge to use its Intellectual Property Rights to the extent necessary for the purpose of this Agreement.

5.4. Any intellectual property developed by the Technical Consultant shall remain the entire property and legal right of the Technical Consultant.

6. LIMITATION OF LIABILITY

6.1. It is the Client's exclusive responsibility to ensure that the parameters of the Project are fully reflected in the Specification. The consequences of any failure so to do, financial or otherwise will be for the sole account of the Client.

6.2. The Technical Consultant shall not be liable for any loss or damage of whatsoever nature suffered by the Client arising out of or in connection with any act, omission, misrepresentation or error made by or on behalf of the Client or arising from any cause beyond Technical Consultant's reasonable control.

6.3. The Technical Consultant is not liable for any indirect loss, consequential loss, loss of profit, revenue, data or goodwill howsoever arising suffered by the Client or for any wasted management time, failure to reconstitute data, failure to make anticipated savings or liability of the Client to any third party arising in any way in connection with this Agreement or any maintenance or other agreement entered into between the Client and Technical Consultant or for any liability of the Client to any third party or otherwise whether or not such loss has been discussed by the parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.

6.4. None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of the Technical Consultant or its appointed agents.

6.5. No matter how many claims are made and whatever the basis of such claims, Technical Consultant's maximum aggregate liability to the Client under or in connection with this Agreement or any other agreement between the parties or any software related to this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 6.2 and 6.3 above or otherwise) whether such claim arises in contract or in tort shall not exceed a sum equal to that of the contract value.

6.6. The Client agrees that it is in a better position to foresee and evaluate any loss it may suffer in connection with this Agreement and that the Project Price has been calculated on the basis of the limitations and exclusions in this Clause 6 and that the Client will effect insurance as is suitable having regard to its particular circumstances and the terms of this clause.

6.7. The solution will be created with a view to ongoing operation and maintenance by the Technical Consultant. If the solution is not being operated and maintained by the Technical Consultant, no liability whatsoever is accepted by the Technical Consultant for any use of the solution by the Client or any third party.

7. TESTING AND ACCEPTANCE OF SOLUTION

7.1. During the development phase of the project, the Technical Consultant will enable the Client to monitor the development of the solution.

7.2. Once the Project has in the opinion of the Technical Consultant been completed, the Technical Consultant will notify the Client in writing and provide the Client with an opportunity to test the solution. The Client shall be deemed to have accepted the solution unless within 14 days of the date of such notification, it notifies the Technical Consultant to the contrary in writing and specifies in such notice the grounds for not accepting the solution. The Client shall not refuse to accept the solution unless it substantially fails to conform to the Specification.

7.3. If the solution does not substantially comply with the Specification, the Technical Consultant agrees to carry out any necessary modifications without extra charge. On completion of such modifications the procedure set out in Clause 7.2 will be repeated.

8. WARRANTIES

8.1. The Technical Consultant makes no warranty that operation of the solution will be uninterrupted or error-free, nor that the solution will be compatible with any particular device or other software other than any specifically identified as suitable in the Specification.

8.2. The Client hereby warrants that it has not been induced to enter into this Agreement by any prior representations whether oral or in writing except as expressly contained in this Agreement and the Client hereby waives claim for breach of any such representations which are not so expressly mentioned.

9. CONFIDENTIALITY

- 9.1. The Technical Consultant undertakes not to divulge or otherwise disclose any information provided by the Client as a result of this agreement until such time as the solution becomes accessible.
- 9.2. The confidentiality provisions of this agreement shall not preclude publicity referring to the existence of this agreement.

10. CHANGE CONTROL

- 10.1. If at any time during the course of this agreement, the Client wishes to modify the Project Specification, the Client shall supply to the Technical Consultant full details of such modification(s) and the Technical Consultant shall prepare a memorandum to reflect the required modification(s).
- 10.2. The Technical Consultant at its option will either quote the Client a fixed price for the modification or estimate the costs on a time and materials basis in accordance with the Billing Rates.
- 10.3. If the Client determines that the modification is to be performed, the memorandum referred to in Clause 10.1 above, subject to any variations agreed by the parties, including terms as to payment, shall be signed by both parties and attached as a Specification Addendum to the Specification.
- 10.4. Any Specification Addendum will be incorporated into this Agreement and the modification covered will, subject to contrary terms in the Specification Addendum, be affected on the terms and conditions of this Agreement.
- 10.5. Acceptance testing of modifications shall be carried out in the manner set out in Clause.
- 10.6. The Client shall not refuse to accept a modification unless it substantially fails to comply with the Specification Addendum.

11. TIME

- 11.1. Whilst any target dates set out in the Specification or elsewhere which relate to the Project are not binding and for guidance purposes only, the Technical Consultant shall use its reasonable endeavours to meet such targets.
- 11.2. Without prejudice to the terms of Clause 11.1, if any failure by the Client to adhere to the terms of this Agreement, lead to any delays, any target dates shall be extended so as to accommodate fully the effects of such delay.
- 11.3. To the extent that any delay is directly or indirectly caused by any act or omission of the Client, the Technical Consultant shall be entitled to charge the Client for the effects of such delay on a time and materials basis at the Billing Rates.

12. TERMINATION

- 12.1. For the purposes of this Clause 12, the following events shall be deemed "acts of default":
- 12.1.1. If the Client fails to pay any moneys due pursuant hereto within 7 days of the due date therefor;
- 12.1.2. If a party commits any material breach of any term of this Agreement (other than one falling under Clause 12.1.1 above) and which, in the case of a breach capable of being remedied, shall not have been remedied within 30 days of a written request by the other party to remedy the same;
- 12.1.3. If a party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with or assignment for the benefit of its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or liquidator or similar officer is appointed in respect of the other party or all or any part of its business or assets or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if any analogous step is taken in any jurisdiction.
- 12.2. If the Client commits an act of default, then Technical Consultant may:
- 12.2.1. forthwith suspend the Project hereunder and no such suspension shall be deemed a breach of any term or provision of this Agreement; or
- 12.2.2. Terminate this Agreement by notice in writing forthwith.
- 12.3. If Technical Consultant commits an act of default, then the Client may terminate this Agreement by notice in writing forthwith.
- 12.4. Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.5. In the event of termination of this Agreement:
- 12.5.1. The Client agrees to immediately pay the Technical Consultant all outstanding payments;
- 12.5.2. The Technical Consultant's entitlement to use the Client's trademarks ceases immediately except as necessary for the provision of any post-termination services;
- 12.5.3. The Technical Consultant may in its sole discretion agree to provide any assistance reasonably requested by the Client in connection with the hand-over to a third party of any services provided by Technical Consultant hereunder, and the Client shall pay the Technical Consultant in accordance with its then current Billing Rates for any such assistance.
- 12.6. Termination of this Agreement shall be without prejudice to any rights or obligations which shall have accrued prior to such termination.

13. FORCE MAJEURE

- 13.1. Neither party hereto shall be liable for any breach of its obligations hereunder, except in respect of payment, resulting from causes beyond the reasonable control of the party in default (or its sub-contractors) including but not limited to act of God, war, insurrection, riot, civil commotion, Government regulation, embargo, explosion, strike, labour dispute, illness, pandemic, flood, fire or tempest (an 'Event of Force Majeure'). Any time limit or estimate for a party to perform any act hereunder shall be suspended during an Event of Force Majeure.

- 13.2. Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the event of Force Majeure.

- 13.3. If a default due to an Event of Force Majeure shall continue for more than 30 days, then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an event of Force Majeure, but such termination shall not affect any pre-existing rights or obligations of either party.

14. WAIVER

- 14.1. The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

15. NOTICES

- 15.1. Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or email (such postal notice to be confirmed by email, instant message, text, phone call or voicemail within 12 hours) to the address of the other party set out in this Agreement (or such other address or numbers as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery and (if sent by post) upon the expiration of 48 hours after posting.

16. PUBLICITY

- 16.1. No announcement or information concerning this Agreement, or any ancillary matter shall be made or released or authorised to be made or released in any advertising publicity promotional or other marketing activities by either of the parties until the software/website has been completed.

17. INVALIDITY AND SEVERABILITY

- 17.1. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

18. ENTIRE AGREEMENT

- 18.1. Subject to Clause 18.2, this written Agreement (including the Schedules) constitute the entire agreement between the parties hereto relating to the subject matter hereof. In entering into this Agreement neither party has relied on any representation made by the other party unless such representation is expressly included herein. Nothing in this Clause 18.1 shall relieve either party of liability for fraudulent misrepresentations and neither party shall be entitled to any remedy for either any negligent or innocent misrepresentation except to the extent (if any) that a court, arbitrator or expert appointed under Clause 22 may allow reliance on the same as being fair and reasonable.
- 18.2. No change, alteration or modification to this Agreement shall be valid unless in writing and signed on behalf of both parties hereto.

19. SUCCESSORS

- 19.1. This Agreement shall be binding upon and ensure for the benefit of the successors in title of the parties hereto.

20. ASSIGNMENT

- 20.1. The Client shall not be entitled to assign this Agreement nor all or any of its rights and obligations hereunder.

21. SUB-CONTRACTING AND THIRD-PARTY RIGHTS

- 21.1. Technical Consultant shall be entitled to sub-contract the whole or any part of its obligations hereunder to any third party but shall remain liable as if it were performing the Project itself.
- 21.2. No term of this Agreement is intended to confer a benefit on or to be enforceable by, any person who is not a party to this Agreement.

22. DISPUTES

- 22.1. All disputes or differences which shall at any time hereafter arise between Technical Consultant and the Client in respect of the construction or effect of this Agreement or the rights duties and liabilities of the parties hereunder or any matter or event connected with or arising out of this Agreement (a 'Relevant Event') shall be referred to such independent third party (the 'Third Party') as Technical Consultant and the Client shall jointly nominate.
- 22.2. If Technical Consultant and the Client shall fail to nominate a Third Party within 14 days of the date of occurrence of the Relevant Event then the Third Party shall be nominated at the request of either Technical Consultant or the Client by the President for the time being of the British Computer Society.
- 22.3. The Third Party shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon Technical Consultant and the Client.

23. LAW

- 23.1. This Agreement shall be governed by and construed in accordance with English law and (subject always to Clause 22) the parties submit to the exclusive jurisdiction of the courts of England and Wales.