

D:CONSTRUCTED LIMITED (the "Company") is a multimedia design, hosting, voice over IP ("VOIP") and computer consulting company. We have developed this agreement to clearly spell out the business relationship between D:CONSTRUCTED LIMITED and our Clients.

The following terms comprise the contractual terms between the Company and the Client for the supply of services by the Company. No other terms apply unless varied in writing by the Company and the Client.

These terms and conditions are available at [www.dconstructed.co.uk](http://www.dconstructed.co.uk) and may be revised from time to time.

## Standard Terms and Conditions

### 1. Definitions

- 1.1 In this Agreement the following words and expressions shall have the meaning set out below:

"**Acceptance**" means the passing of the acceptance tests pursuant to clause 2, and "**Accepted**" shall be construed accordingly;

"**Client Content**" the information, data and software provided to the Company by the Client for incorporation into the Project;

"**Commencement Date**" means the first day of the month following the written acceptance of this agreement or any subsequent quote, unless otherwise agreed in writing;

"**Error**" any material failure of the Project or part to comply with the Specification;

"**Intellectual Property Rights**" means any and all registered and unregistered copyright patents, design rights, database and compilation rights, Marks (and related goodwill), trade secrets and other intellectual property rights, howsoever arising and in whatever media, and any applications for their protection or registration and all renewals and extensions anywhere in the world;

"**Marks**" means any and all names, brands, logos, trade marks, service marks, trade names and domain names;

"**Password**" means the code/s which facilitate access to the Project and its configuration;

**"Project"** means the internet related, VOIP or computer consultancy project to be designed, implemented and tested by the Company, and further described by the Specification; and

**"Specification"** means an accurate description of what the project aims to achieve, its parameters, scope and estimated timescales, as agreed by the Client.

- 1.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting any gender include any other genders, and words denoting persons include firms and corporations and vice versa.
- 1.3 Unless otherwise stated, a reference to: (a) a clause or a Schedule is a reference to a clause of or schedule to this Agreement. Clause headings are for ease of reference only and do not affect the construction of this Agreement; (b) "include" and "including" shall be construed without limitation; and (c) any Act of Parliament shall be deemed to include any amendment, replacement or re-enactment thereof then in force and to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, licences, conditions or permissions made hereunder.

## **2. Development and Acceptance**

- 2.1 Subject to the payment of the fees and the provision of Client Content by the Client, the Company agrees to design and implement the Project using reasonable endeavours and in accordance with the Specification and the other provisions of this Agreement.
- 2.2 The Company shall notify the Client when the Project or any agreed part is available for acceptance testing. The Client shall notify the Company of any Errors in that version of the Project within 30 days, unless otherwise agreed in writing.
- 2.3 If the Client notifies the Company of any Errors, the Company shall endeavour to correct such Errors and clause 2.2 shall apply again to such Project or part.
- 2.4 If the Client does not notify Company of any Errors as provided in clause 2.3, or if the Client notifies the Company that there are no Errors in that version, then the Project or the relevant part shall be Accepted. Unless otherwise agreed, the Project shall not be Accepted until all the parts of the Project are Accepted.

## **3. Amendments to Specification**

- 3.1 The parties agree that amendments to the Specification can only be made and agreed in writing. If at any time the Client wishes to amend the Specification, or any aspect of the implementation of the Project, the Client shall provide the

Company with written details together with such further information as the Company may require in order to assess the proposed amendments.

- 3.2 The Company shall, within a reasonable time of receipt of all of the information specified in clause 3.1, submit to the Client a revised Specification and quotation for any additional fees required in order to implement the amendments proposed by the Client (the "**Response**").
- 3.3 If the Client wishes to accept the Response, then it shall do so within 30 working days of receipt of the Response, in which case this Agreement (including the Specification and the fees) shall be amended in accordance with the Response otherwise work shall continue by the Company without amendment.

#### 4. Support

- 4.1 If Support Services are specifically provided for, the Company shall provide the Support Services using reasonable skill and care.
- 4.2 Response times for support services shall be 48 hours, unless otherwise agreed in writing.
- 4.3 For Business Critical support services the response time shall be same day, unless otherwise agreed in writing. Business Critical events are defined as email services outage (external email failing), VOIP outage (unable to make internal/external calls), critical application server outage (active directory controller, primary file server), and/or loss of internet connectivity ("**Business Critical**").
- 4.4 Response times do not guarantee a fix within that time period.
- 4.5 The Company cannot be held responsible for the actions or otherwise of external vendors including but not limited to email and web hosting service providers, VOIP (including managed PBX solutions and SIP trunks) service providers, internet service providers.
- 4.6 All requests for support must be made via email in the first instance but may also be accompanied by a phone call.

#### 5. Client Obligations

- 5.1 The Client agrees:
  - (a) that, unless otherwise agreed, this Agreement does not include the provision of equipment, telecommunications or other services necessary to host or access the Project and the Client is responsible for providing and maintaining suitable equipment, telecommunications and support services to facilitate access to the Project. This includes the renewal of domain names, even where registration was initially undertaken by the Company;

- (b) that the Company shall accept no liability for faulty PC's and all other hardware, even if such hardware is supplied by the Company. All hardware supplied shall be covered by the manufacturers warranty and the company shall not be party to this contract;
- (c) that the Company shall accept no liability for any breaches of security to the Client's website and/or other systems, and/or damage to hardware or software resulting from this breach;
- (d) to keep all Passwords secret at all times and to ensure that these passwords are complex in formation i.e. a mix of lower and uppercase letters and numbers;
- (e) to provide Client Content as expressly set out in the Specification and comply with any of its other obligations under the Specification (including payment);
- (f) to display the web address or logo of the Company as a hyperlink on any website designed by the Company; and
- (g) once the project has been Accepted, to maintain regular up-to-date back-ups of all content hosted by the Company.

## **6. Payment**

- 6.1 The Company shall invoice the Client and the Client shall pay the Fees and Support Fees and any other charges due to the Company within thirty (30) days of the invoice date.
- 6.2 If any sum due to the Company remains outstanding after thirty (30) days from the invoice date then, without prejudice to any other rights and remedies of the Company, such sums shall attract interest at the then current rate of [Abbey] plus two percent, before and after judgement, from the invoice date until payment is made in full.
- 6.3 Fees for monthly or annual services may be subject to a fee increase at the anniversary of the Commencement Date every year.

## **7. Warranties**

- 7.1 Each party warrants to the other that it has the full right, power and authority to enter into and perform this Agreement and has not entered into any arrangement which in any way conflicts with this Agreement or inhibits, restricts or impairs its ability to perform its obligations under this Agreement.
- 7.2 The Client warrants that it has sufficient rights (including Intellectual Property Rights) in the Client Content to grant to the Company the rights set out in this Agreement and has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for the Company to provide the Project.

- 7.3 The Company warrants that it has sufficient rights (including Intellectual Property Rights) in and relating to the Project to grant to the Client the rights set out in this Agreement and has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for the Client to make commercial use of the Project.
- 7.4 Except as expressly provided this Agreement, each party expressly disclaims any further representations, warranties, conditions or other terms, express or implied, by statute, collaterally or otherwise, including but not limited to implied warranties, conditions or other terms of satisfactory quality, fitness for a particular purpose or reasonable care and skill.

## **8. Intellectual Property Rights**

- 8.1 The copyright in any methodologies and technologies provided by the Company for the Project shall remain in the Company or its licensors. All Intellectual Property rights created, whether alone or jointly, by the Company in connection with the Project shall by way of present and future assignment be assigned to the Client.
- 8.2 The Company grants the Client a royalty-free, worldwide, non-exclusive licence to use and modify any methodologies and technologies provided by the Company.
- 8.3 The Company waives any moral rights, as defined in sections 77 to 83 of the Copyright, Designs and Patents Act 1988, subsisting in any copyright work created for the Client under this Agreement.
- 8.4 Nothing in this Agreement shall be taken to prevent the Company from using any expertise acquired or developed during the performance of this Agreement in the provision of services for other companies or on its own behalf.

## **9. Term**

The Agreement shall commence on the Commencement Date and shall continue until completion and payment of the Project or the end of the Support Period unless and until terminated in accordance with clause 14 ("**Term**").

## **10. Limitation of Liability**

- 10.1 Neither party shall be liable in contract, tort (including negligence) or otherwise arising in connection with this Agreement for: (i) consequential, indirect or special loss or damage; or (ii) any loss of goodwill or reputation; or (iii) any economic losses (including loss of revenues, profits, contracts, business or anticipated savings) in each case, even if the relevant party has been advised of the possibility of such loss or damage and howsoever incurred.

- 10.2 Both parties agree that the maximum liability of either party in contract, tort (including negligence) or otherwise arising in connection with this Agreement shall be limited to the charges payable by the Client in respect of the Company's services hereunder.
- 10.3 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees acting in the course of their duties.

## **11. Force Majeure**

Neither party will be liable for any failure or delay in performing its obligations under this Agreement to the extent that this failure or delay is the result of any cause or circumstance beyond the reasonable control of that party including acts of god, war, civil commotion or industrial dispute and that failure could not have been prevented or overcome by that party acting reasonably and prudently. If either party is prevented from performing its obligations for a period exceeding six (6) months due to Force Majeure then the other party may terminate this Agreement on one month's written notice.

## **12. Confidentiality and Data**

- 12.1 During the Term of this Agreement and for two (2) years thereafter, each party will treat as confidential all information that it obtains concerning, but not limited to, the business, finances, technology and affairs of the other ("**Confidential Information**").
- 12.2 Each of the parties will use at least the same degree of care (and not less than a reasonable degree of care) it uses to prevent the disclosure of its own confidential information of like importance, to prevent the disclosure of Confidential Information of the other party.
- 12.3 Each party will promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.
- 12.4 The provisions of clause 12 shall cease to apply to: (i) information that has come into the public domain other than by breach of this clause or breach of any other duty of confidence; (ii) information that is obtained from a third party without breach of this clause or breach of any other duty of confidence; and (iii) information that is required to be disclosed by a regulatory or government body or court of competent jurisdiction with power to compel the disclosure.
- 12.5 In the event of termination or expiration of this Agreement, each party shall return or upon request of the other party, destroy the Confidential Information of that party.
- 12.6 Each party will comply with its obligations pursuant to the Data Protection Act 1998.

### 13. Termination

- 13.1 Either party may terminate this Agreement on 60 days prior written notice... The Company shall invoice the Client for any work carried out up to and including the end of the notice period.
- 13.2 Each party shall have the right to terminate this Agreement on written notice in the event that the other:
- (a) commits any material breach of the terms of this Agreement which, in the case of a breach capable of remedy, is not remedied within thirty (30) days of service of a notice specifying the breach and stating the intention to terminate the Agreement if not remedied;
  - (b) holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986);
  - (c) has a receiver, administrator, or other encumbrancer take possession of, or appointed over, or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; or
  - (d) ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 13.3 Upon the termination or expiry of this Agreement, each party shall return to the other party all licensed materials and Confidential Information, and all copies in whole or part, of the other party or if requested by the other party, shall destroy them and certifying in writing to the Licensor that they have been destroyed.
- 13.4 Termination or expiry of this Agreement shall be without prejudice to any rights, liabilities or remedies of a party accrued before termination, nor shall it affect any provision of this Agreement which is expressly intended to come into or continue in force after termination or expiry.

### 14. General

- 14.1 **Relationship** Nothing in this Agreement shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties nor shall it be deemed to grant any authority not expressly set out in the Agreement or create any agency between the parties.
- 14.2 **Entire agreement** Each party confirms that this Agreement sets out the entire agreement and understanding between the parties and that it supersedes all previous agreements, arrangements and understandings between them relating to the subject matter of the Agreement. Each party confirms that it has not

relied upon any statement, representation or understanding that is not an express term of this Agreement and shall not have any remedy in respect of any statement, representation or understanding which is not an express term unless made fraudulently.

- 14.3 **Waiver** No failure or delay by any party in exercising any right, power or remedy under this Agreement will operate as a waiver of that or any other right, power or remedy, nor will any single or partial exercise by either party of any right, power or remedy preclude any further exercise of any other right, power or remedy.
- 14.4 **Severance** To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that provision shall be deemed not to be a part of this Agreement, and it shall not affect the validity, lawfulness or enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 14.5 **Rights of Third Parties** Nothing in this Agreement shall create or confer any rights or other benefits, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, in favour of any person other than the parties to this Agreement.
- 14.6 **Further Assurance** Each party shall, at the cost and expense of the other party, use all reasonable endeavours to do all such further acts and things and execute or procure the execution of all such other documents as that party may from time to time reasonably require, for the purpose of giving that party the full benefit of the assets, rights and benefits to be transferred to the other party under this Agreement.
- 14.7 **Assignment** Each party shall not be entitled to assign, transfer, charge or licence the whole or any part of its rights and/or obligations under this Agreement to any third party without consent of the other party.
- 14.8 **Governing law** This Agreement shall be construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of English Courts.
- 14.9 **Miscellaneous** The rights and remedies of the parties under this Agreement are cumulative and in addition to any rights and remedies provided by law. Any variation to this Agreement must be in writing and agreed by the parties.