



terms and conditions
(it's not the most interesting read, but it's important stuff!)

TERMS AND CONDITIONS FOR MOBILE OR WEB APP DEVELOPMENT

These terms and conditions ("**Terms**") set out the basis on which 57Digital Limited ("**57Digital**") will provide the Services (as defined below).

1. DEFINITIONS AND INTERPRETATION

1.1. In these Terms, the following expressions will have the following meanings:

Acceptance Tests means the tests of the Application to be carried out in accordance with the Proposal.

Application means the Web Application or Mobile Application which 57Digital has agreed to develop and which is comprised of the Application Software and the Open- Source Software and further described in the Proposal.

Application Software means the 57Digital Standard Software, the Bespoke Software and the Open-Source Software.

App Store means an online or remote-accessed location where the Application will be made available for downloading.

Authorised Users means the Customer's employees, contractors, officers and other personnel who are authorised by the Customer to use the Application on the Customer's behalf in connection with the Customer's business.

Bespoke Software means software programs developed by 57Digital specifically for the Customer as part of the Application, as further described in the Proposal.

Confidential Information means information that is confidential and is either clearly labelled as such when disclosed or which the reasonable person would recognise as being such.

Contract means the contract between the parties for the supply of the Services.

Customer Materials means any content provided to 57Digital for incorporation in the Application.

Defect means an error in the Application that causes it to fail to operate substantially in accordance with the Technical Specification.

Development Fee means the fee payable for the Development Services and the grant of the Licence, in the amounts out in the Order.

Development Services means the services to be provided by 57Digital in relation to the development and delivery of the Application.

Dispute Resolution Procedure: the procedure for dealing with disputes under the Contract as set out in clause 17.1.

Documents the manuals and instructions supplied by 57Digital as specified in the Proposal.

Initial Support Period means the initial period of time (if any) during which 57Digital will provide the Support Service, being the period set out in the Order or agreed in writing between the parties.

Insolvency Event means an event whereby a party makes a resolution for its winding up, makes an arrangement or composition with its creditors or an application or order for the winding up, bankruptcy or administration of a party is made, or an administrator or administrative receiver is appointed in relation to that party.

Intellectual Property Rights means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world whether or not now existing or applied for and all accrued rights of action in respect of any such rights.

Licence means the licence granted under clause 9.

Licensed Users means, in relation to a Mobile Application, any person who downloads the Application from the App Store is otherwise permitted to use or download the Application by the Customer.

Mobile Application means application software designed for use on a wireless device;

Normal Working Hours means the hours 9am to 5pm pm GMT, Monday to Friday, except Bank Holidays in England and Wales.

Open-Source Software means any open-source software (as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>)) used in, or in the development of, the Application.

Operating Requirements means the requirements for effective operation of the Application, including in relation to the hardware and operating system supported by the Application, as set out in the Proposal or Documentation.

Order means the 57Digital order form containing the Customer's order for the Services.

Proposal means 57Digitals' written proposal in relation to the Services.

Services means the Development Services and, if included in the Order or otherwise agreed in writing between the Parties, the Support Services.

Source Code means the source code of Application Software and any technical information and documentation required to enable the Customer to operate it.

57Digital Software means 57Digital Standard Software, the Bespoke Software and any modifications, updates or new versions provided by 57Digital to the Customer from time to time.

57Digital Standard Software means the proprietary software of 57Digital which existed prior to the Commencement Date or is developed other than specifically for the Application, as referred to in the Proposal.

Site means in relation to an Application which is a Web Application, the website in connection with which the Application is required to operate.

Support Fees means any fees payable by the Customer for the provision of the Support Services as set out in the Order or agreed in writing between the Parties.

Support Policy means 57Digital's policy from time to time in relation to Support Services.

Support Service means the maintenance and support services in relation to Application Software which are described in the Support Policy.

Support Service Start Date means the date on which any Support Service will commence, being the date set out in the Order or otherwise agreed in writing between the Parties.

Technical Specification means the description of the Application set out in the Proposal.

Third Party Supplier means any third party appointed by the Customer to provide products or services for use in connection with the Application including, without limitation, the App Store and the host of the Application.

Timetable means the agreed timetable for the performance of the Development Services as set out in the Proposal or otherwise agreed in writing between the parties.

VAT means value added tax and any similar or equivalent tax.

Virus means any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation, or the user's experience of using any hardware or software.

Web Application means application software designed to perform a particular function in connection with a website.

1.2. In these Terms:

1.2.1. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

1.2.2. unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;

- 1.2.3. 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;
- 1.2.4. **writing** or **written** includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary;
- 1.2.5. if any conflict arises between these Terms and the Proposal or any Statement of Work, these Terms will prevail.
- 1.2.6. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.7. references to the parties are to the Customer and 57Digital.

2. BASIS AND SCOPE OF THE CONTRACT

- 2.1. The Contract will take effect when the parties have both signed the Order, at which point and on which date the Contract will commence (the "**Commencement Date**"). The Contract shall continue until completion of the Services unless terminated earlier in accordance with these Terms.
- 2.2. These Terms and any documents referred to in them will apply to the Contract to the exclusion of any other terms that the Customer might seek to apply or which are implied by trade, customer or a course of dealing.
- 2.3. These Terms and any documents referred to in them constitute the entire agreement between the parties and the Customer acknowledges and agrees that it has not relied on any statement, representation or promise by or on behalf of 57Digital which is not set out in these Terms or those documents.
- 2.4. Subject to the Contract taking effect in accordance with these Terms, 57Digital Grants the Licence and agrees to supply the Application, the Documents and the Services in accordance with these Terms.

3. SERVICES

- 3.1. 57Digital will provide the Services on and subject to these Terms.
- 3.2. The Customer agrees to:
 - 3.2.1. comply with its obligations set out in these Terms, the Proposal and, to the extent that the Services include the Support Service, the Support Service Policy; and
 - 3.2.2. provide 57Digital with such information, instructions and cooperation as 57Digital reasonably requires to provide the Services.
- 3.3. Notwithstanding any other provision of these Terms, the Proposal or the Support Policy, time for performance of the Services will not be of the essence of the Contract and the dates set out in the Timetable are estimates only.
- 3.4. If at any time 57Digital's performance of the Services is delayed at the Customer's request or because of its acts and omissions:
 - 3.4.1. the relevant Timetable shall be deemed to be amended to take into account the delay; and
 - 3.4.2. if the delay results in an increase in 57Digital's cost of supplying the Services, 57Digital may increase the Fees proportionately on written notice to the Customer.
- 3.5. 57Digital shall be entitled to suspend the Services if:
 - 3.5.1. the Customer fails at any time to pay any of the Fees when they fall due;
 - 3.5.2. the Customer is in material breach of any of its obligations under the Contract; or
 - 3.5.3. the Customer commits a material breach of the terms of the Licence.

4. APPLICATION AND DOCUMENTS

- 4.1. 57Digital shall perform the Development Services with reasonable skill and expertise and use its reasonable endeavours to develop and deliver the Application in accordance with the Technical Specification and the Timetable.
- 4.2. 57Digital shall provide the Customer with Application Software in accordance with the Proposal.
- 4.3. 57Digital shall provide to the Customer, from time to time, copies of the Documents. These Documents may be supplied in electronic form.
- 4.4. The Customer may make such further copies of the Documents as are reasonably necessary for the use of the Application. The Customer shall ensure that all of 57Digital's proprietary notices are reproduced in any such copy.
- 4.5. 57Digital shall use its reasonable endeavours to deliver each module of the Application to the Customer by the applicable date in the Timetable.

5. ACCEPTANCE

- 5.1. If and to the extent that the Proposal provides for the carrying out of Acceptance Tests, the Parties will carry out the Acceptance Tests in accordance with the Proposal. Each of the Parties shall provide the other with such cooperation, information and assistance as is reasonably necessary to carry out the Acceptance Tests.
- 5.2. If the Application or any module of the Application fails to pass the Acceptance Tests, the Customer shall notify 57Digital within 7 days of the failure occurring and 57Digital shall remedy the Defect, and the relevant test(s) shall be repeated, in each case within a reasonable time.
- 5.3. If the Application or any module of the Application fails in some material respect to pass the Acceptance Tests for a second or subsequent time then the Customer may request 57Digital to rectify any Defects, in which case the process referred to in clauses 5.1 and 5.2 shall be repeated.
- 5.4. If the Application or any module of the Application fails in some material respect to pass the Acceptance Tests within 3 months of them first being carried out, either Party may terminate the Contract on written notice to the other, in which case the Customer will be entitled to a refund of any Fees paid.
- 5.5. Acceptance of Application Software ("**Acceptance**") shall be deemed to have occurred on whichever is the earliest of:
 - 5.5.1. the signing by the Customer of an acceptance certificate for the final module of the Application to pass the Acceptance Tests;
 - 5.5.2. the expiry of 7 days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under clause 5.2;
 - 5.5.3. the Customer using the Application in the usual course of its business;
 - 5.5.4. in relation to a Web Application, the Customer instructs 57Digital to deliver the Application to the Third Party Supplier appointed to host it;
 - 5.5.5. in relation to an Mobile Application, the Customer placing the App in the App Store or instructing 57Digital to place the Application in the Appstore.

6. SUPPORT SERVICES

- 6.1. If and to the extent that the Services include the Support Service, 57Digital will provide the Support Service in accordance with these Terms and the Support Service Policy.
- 6.2. 57Digital will provide the Support Service from the Support Service Start Date for the Initial Support Period and after that for successive periods equivalent in length to the Initial Support Period (each an "**Additional Support Period**") unless and until the Support Service is terminated:
 - 6.2.1. by either party giving the other not less than 3 months' written notice expiring at the end of the Initial Support Period of an Additional Support Period; or

6.2.2. by virtue of the Contract being terminated in accordance with these Terms.

7. FEES AND PAYMENT

- 7.1. 57Digital shall submit invoices for the Development Fees in the amounts and in the instalments set out in the Proposal.
- 7.2. If and to the extent that the Services include the Support Service, 57Digital shall invoice the Customer for the Support Fees within the 30 days prior to the start of the Initial Support Period and each Additional Support Period.
- 7.3. The Customer shall pay each invoice submitted by 57Digital within 30 days of the date of the invoice.
- 7.4. The Fees are net of tax and the Customer shall, in addition, pay to 57Digital the amount of any tax, duty or assessment, including any applicable VAT, which 57Digital is obliged to pay and/or collect from the Customer in respect of the Fees.
- 7.5. If the Customer fails to make any payment due to 57Digital under the Contract by the due date for payment, then, without limiting 57Digital's other remedies under these Terms, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate from time to time of 57Digital's main bank in the UK. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.6. 57Digital may increase the Support Fees at any anniversary of the Support Service Start Date by giving the Customer at least three months' notice before such anniversary.
- 7.7. Reasonable out-of-pocket expenses may be charged by 57Digital on production of reasonable evidence of expenditure to the Customer.
- 7.8. The Customer shall pay 57Digital's invoices without withholding, set-off or counterclaim, except as required by law.

8. CHANGE CONTROL

- 8.1. The Customer may, by giving written notice to 57Digital at any time prior to Acceptance, request a change to the Application.
- 8.2. Within seven working days of receipt of such notice, 57Digital shall indicate whether or not it is willing and able to carry out the request changes and, if so, provide a written estimate of any increase or decrease in the Development Fee, and of any effect that the requested change would have on the Timetable.
- 8.3. Within 14 working days of receipt of the written estimate referred to in clause 8.2, the Customer shall inform 57Digital in writing of whether or not the Customer wishes the requested change to be made. If the change is required, 57Digital shall not make the requested change until the parties have agreed and signed a written agreement (**Change Agreement**) specifying, in particular, any changes to the Timetable and Development Fee.
- 8.4. If 57Digital is unwilling or unable to effect a requested change or if the Customer does not instruct 57Digital to make the requested change, the Contract shall continue unaffected.

9. SOFTWARE LICENCE AND DOCUMENTS

- 9.1. Subject to the terms of the Contract, 57Digital grants to the Customer the non-exclusive, non-transferable right:
 - 9.1.1. to use and to allow its Authorised Users to use the 57Digital Software and the Documents for its internal business purposes;
 - 9.1.2. in relation to an Application which is a Web Application, to use the 57Digital Software for all purposes in connection with operating the Site; and
 - 9.1.3. in relation to an Application which is a Mobile Application, to sub-license the 57Digital Software to Licensed Users.
- 9.2. The Customer may make such copies of the 57Digital Software as are reasonably necessary for use in accordance with the Contract and for the purposes of backup and security. The

Customer has no right to make, or authorise the making of, any other copies of the 57Digital Software.

- 9.3. Except as permitted under clause 9.1.3, the Customer shall not sub-license, rent, lend, assign or transfer in any other way the Contract or the 57Digital Software to any person without the prior written consent of 57Digital.
- 9.4. Where the Customer licences the use of the 57Digital Software to Licensed Users, it must ensure that it enters into an end user licence agreement with those Licensed Users which terms to the effect that:
 - 9.4.1. the licence granted to the Licensed User to use the 57Digital Software is limited to a non-transferable, non-exclusive licence to use the Application on the Licensed User's mobile device;
 - 9.4.2. the Licensed User acknowledges and agrees that all rights in the Application are owned by the Customer or its licensors; and
 - 9.4.3. the Licensed User agrees that 57Digital is not a party to the agreement between the Licensed User and the Customer and that 57Digital makes no commitment and will incur no liability to the Licensed User.

10. USE AND ADAPTATION OF 57DIGITAL SOFTWARE

The Customer may not and must procure that its Authorised Users do not:

- 10.1. make adaptations or variations of the 57Digital Software without the prior consent of 57Digital.
- 10.2. disassemble, decompile, reverse translate or in any other manner decode the 57Digital Software, except as permitted by law.

11. CONFIDENTIALITY

- 11.1. A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 will survive termination of the Contract.
- 11.2. Subject to clause 11.1, the Customer agrees that 57Digital shall be entitled to provide details of the Application (including, without limitation, screenshots) to its prospective customers for the purpose of demonstrating and promoting its products and services and will be deemed to have provided all necessary consents and permissions.
- 11.3. 57Digital warrants that at the date of Acceptance and for three months after that date, the 57Digital Software will perform materially in accordance with the Technical Specification, subject to the use of the 57Digital Software confirming to the Operating Requirements.
- 11.4. 57Digital warrants that it will perform the Services:
 - 11.4.1. materially in accordance with the Proposal and, to the extent that the Services include the Support Service, with the Support Service Policy;
 - 11.4.2. with reasonable skill and care; and
 - 11.4.3. in compliance with any applicable legal requirements.

- 11.5. The sole remedy for breach of the warranty under **clause** 12.1 shall be correction of Defects by 57Digital within a reasonable time from notification by the Customer of the Defect that constitutes the breach.
- 11.6. The sole remedy set out in clause 12.2 shall be, at 57Digital's option:
 - 11.6.1. the re-performance by 57Digital of the relevant Services to the Customer's reasonable satisfaction; or
 - 11.6.2. the payment to the Customer by 57Digital of a reasonable proportion of the Fees paid in relation to those Services.
- 11.7. The warranties set out in these Terms are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to the Contract. Without limitation, 57Digital specifically denies any implied or express representation that:
 - 11.7.1. the Application Software will be fit to operate in conjunction with any hardware or software other than those identified in the Proposal;
 - 11.7.2. the Application will comply with the terms and conditions or requirements of the App Store;
 - 11.7.3. use of the Application Software will be uninterrupted or error-free; or
 - 11.7.4. 57Digital will be able to remedy all Defects or that any Defects will not materially affected the operation of the Application.
- 11.8. The warranties set out in these Terms in relation to the 57Digital Software will not apply if and to the extent that any Defect results from:
 - 11.8.1. the use of the Application or the Application Software other than in accordance with the Operating Requirements;
 - 11.8.2. any act or omission of a Third Party Supplier (including, without limitation, any changes made by a Third Party Supplier to software intended to interact with the Application) or
 - 11.8.3. any person other than 57Digital or a person authorised by 57Digital amending the Application Software other than as permitted under these Terms.
- 11.9. Any Open-Source Software provided by 57Digital may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 12.5.
- 11.10. The Customer warrants that it:
 - 11.10.1. it not use the Application, or allow any person to use the Application, to transmit any Virus; and
 - 11.10.2. it will comply with all relevant legal and regulatory obligations in relation to its obligations under the Contract.
- 11.11. Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform the Contract and that those signing the Contract are duly authorised to bind the party for whom they sign.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. The Intellectual Property Rights in the 57Digital Software and the Application are, and shall remain, the property of 57Digital (or the appropriate third-party rights-owner(s), if any).
- 12.2. The Customer acquires no rights in or to the 57Digital Software or the Documents other than those expressly granted by the Contract.
- 12.3. The Customer warrants that the use by 57Digital of the Customer Materials will not infringe the Intellectual Property Rights of any third party.
- 12.4. The Customer shall ensure that each Licensed User agrees to the Minimum Terms before using the Application.

- 12.5. Subject to the Customer's compliance with clause 13.7, 57Digital shall indemnify the Customer against all Losses suffered or incurred by the Customer arising out of or in connection with any claim that the 57Digital Software infringes a third party's Intellectual Property Rights.
- 12.6. The Customer shall indemnify 57Digital against all Losses suffered or incurred by 57Digital in connection with any claim that the Customer Materials infringe the Intellectual Property Rights of any third party.
- 12.7. If either party (the "**Indemnified Party**") is subject to a claim which is likely to give rise to a liability under an indemnity given the other party (the "**Indemnifying Party**") under these Terms (a "**Claim**") then the Indemnified Party shall:
- 12.7.1. give written notice and details of the Claim to the Indemnifying Party as soon as reasonably practicable;
- 12.7.2. not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed);
- 12.7.3. give the Indemnifying Party all reasonable cooperation, information, support and assistance in relation to the Claim; and
- 12.7.4. subject to the Indemnifying Party providing reasonable security against any Losses, take such action as the Indemnifying Party may reasonably request to avoid, dispute, compromise or defend the Claim.
- 12.8. 57Digital shall have no liability for any claim of infringement of Intellectual Property Rights:
- 12.8.1. caused or contributed to by the Customer's use of the Application other than in accordance with the Operating Requirements; or
- 12.8.2. where the claim for infringement arises in respect of a feature of the Application that was specified by the Customer or incorporates the Customer Materials.
- 12.9. If any Claim is made, or in 57Digital's reasonable opinion is likely to be made, against the Customer, 57Digital may at its sole option and expense:
- 12.9.1. procure for the Customer the right to continue to use the 57Digital Software (or any part thereof) in accordance with the terms of this licence;
- 12.9.2. modify the 57Digital Software so that it ceases to be infringing;
- 12.9.3. replace the 57Digital Software with non-infringing software; or
- 12.9.4. terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
- provided that if 57Digital modifies or replaces the 57Digital Software, the modified or replacement software must comply with the warranties contained in clause 12 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this licence been references to the date on which such modification or replacement was made
- 12.10. Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

13. LIMITATION OF LIABILITY

- 13.1. Neither party excludes or limits liability to the other party for:
- 13.1.1. fraud or fraudulent misrepresentation;
- 13.1.2. death or personal injury caused by negligence;
- 13.1.3. a breach of any terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

- 13.1.4. any matter for which it would be unlawful for the parties to exclude liability.
- 13.2. Subject to clause 14.1, 57Digital shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
 - 13.2.1. any loss of profits, business, opportunities, revenue, turnover, reputation or goodwill;
 - 13.2.2. any loss or corruption (whether direct or indirect) of data or information;
 - 13.2.3. loss of anticipated savings or wasted expenditure (including management time); or
 - 13.2.4. any indirect or consequential loss (even if 57Digital was aware of the possibility of such loss).
- 13.3. 57Digital shall not be liable to the Customer for any act or omission by any person appointed by the Customer to provide hosting services or any other services in relation to the Application, notwithstanding any recommendation or introduction made by 57Digital in relation to such person.
- 13.4. Subject to clause 14.1, 57Digital's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract or any collateral contract shall not exceed the amount of the Fees paid or payable in the year in which any claim or claims against it arise.

14. TERMINATION

- 14.1. Without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either party may at any time terminate the Contract and/or the Support Services with immediate effect by giving written notice to the other party if:
 - 14.1.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 14.1.2. the other party commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 14.1.3. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
 - 14.1.4. the other party is subject to an Insolvency Event;
 - 14.1.5. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 14.2. On termination of the Contract by 57Digital acting in accordance with its rights under clause 15.1, the Licence shall automatically terminate and the Customer shall promptly delete any copies of the Application Software in its possession.
- 14.3. Upon termination of the Contract for any reason:
 - 14.3.1. neither party shall have any further obligation to the other under the Contract after its termination.
 - 14.3.2. any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
 - 14.3.3. the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry shall be unaffected;
 - 14.3.4. each party shall as soon as reasonably practicable return, destroy or permanently erase (as directed by the other party) any Confidential Information relating to the other party and, if required to do so by the other party, confirm in writing that such steps have been taken;

- 14.3.5. 57Digital shall promptly refund such portion of the Support Fee (if any) as relates to the period after expiry or termination on a pro rata basis;
- 14.3.6. the Customer shall immediately pay any outstanding unpaid invoices and interest due to 57Digital; and
- 14.3.7. 57Digital shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

15. FORCE MAJEURE

- 15.1. 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. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.
- 15.2. If termination occurs under clause 16.1, all sums paid to 57Digital by the Customer under the Contract shall be refunded to the Customer, except that 57Digital shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that 57Digital takes all reasonable steps to mitigate the amount due.

16. NOTICES

- 16.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or, in any case, such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or fax.
- 16.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 17.1 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax one Business Day after transmission.
- 16.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

17. DISPUTE RESOLUTION

- 17.1. Any dispute that may arise between the parties concerning the Contract shall be determined as provided in this clause 17.1.
- 17.2. For the purpose of this clause 17.1, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 17.3. Unless the Contract has already been terminated by the date of the notice of dispute, the parties shall continue to perform their obligations under the Contract.
- 17.4. After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 18.4 shall be extendable by mutual agreement):
 - 17.4.1. within two days, senior representatives of the parties shall meet to attempt to settle the dispute;
 - 17.4.2. if the parties' representatives are unable to reach a settlement within seven days of the meeting, either party may, by written notice to the other, request that the dispute is referred to mediation, the mediator to be nominated by the Centre for Dispute Resolution unless agreed between the parties within 14 days of the request; and
 - 17.4.3. the costs of mediation shall be borne equally by the parties.

- 17.5. All negotiations shall be conducted in confidence and without prejudice to the rights of the parties in future legal proceedings. Any settlement reached shall become binding on the parties only when put in writing and signed by a duly authorised representative of each party.

18. OTHER IMPORTANT TERMS

- 18.1. The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.
- 18.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).
- 18.3. Except as expressly provided in the these Terms the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.
- 18.4. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.5. 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.
- 18.6. A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.7. Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- 18.8. A person who is not a party to the Contract shall not have any rights to enforce its terms.