



## **Standard Terms and Conditions**

### **1. Terms and Conditions**

1.1 These Standard Terms and Conditions together with the Commercial Terms and any attached Statement of Work form a binding agreement (the “Agreement”) between the Client and Jacana IT Solutions.

1.2 Where the context permits or requires the following terms shall be interpreted as follows:

“Change” means additional Works or any change to the Works;

“Client” means the company named in the Commercial Terms;

“Client Materials” means all content, materials, data and information provided or to be provided by Client including as described in the Commercial Terms;

“Client Owned Works” means the parts of the Works specifically created or arising in direct consequence of the development of the Works for the Client other than the Licensed Works and third party materials;

“Client Suppliers” has the meaning given to it in Clause 2.4;

“Commercial Terms” means the letter containing the commercial terms of the engagement of Jacana IT Solutions by Client, to which these Standard Terms and Conditions are attached or apply;

“Defect” means a material defect or error in the Works or material non-compliance with the Commercial Terms, caused by Jacana IT Solutions;

“Fees” means the sums payable to Jacana IT Solutions including as described in the Commercial Terms;

“IPRs” means intellectual property rights including copyright, design right, trade mark rights, database rights, rights in confidential information and other rights of a like nature worldwide (registered or not);

“Licensed Works” means any (i) ‘back end’ and other technology, including but not limited to methodologies, specifications, programs, computer software, source code, information, know-how, data, processes, tools and any other technology developed or used by Jacana IT Solutions in the provision of the Works, (ii) any pre-existing materials already owned by Jacana IT Solutions, (iii) film content, which shall remain the property of Jacana IT Solutions;

“Statement of Work” means the proposal document drafted by Jacana IT Solutions with respect of the Works to be provided;

“Works” means goods and / or services described in the Commercial Terms and/or Statement of Work, and each part of any of them; and

“Working Days” means a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business.

### **2. Works**

2.1 In consideration of the payment by Client to Jacana IT Solutions of the Fees, Jacana IT Solutions agrees to provide the Works.

2.2 Jacana IT Solutions will assign personnel whom it considers appropriate to perform the Works and may at any time at Jacana IT Solutions' discretion assign, reassign and substitute personnel and outsource or sub-contract the Works.

2.3 Client will co-operate fully with and act in good faith towards Jacana IT Solutions at all times and provide all Client Materials by the date specified in the Commercial Terms or otherwise promptly on request.

2.4 Jacana IT Solutions shall not be liable for any delay in the performance of this Agreement if such delay is caused directly or indirectly by Client and/or its agents and/or nominated Suppliers and/or Contractors (“Client Suppliers”) or any failure of

Client and/or any Client Suppliers to supply Jacana IT Solutions with Client Materials, approvals or instructions requested or required by Jacana IT Solutions.

### **3. Delivery and Warranty**

3.1 Delivery of the Works shall be in accordance with the Commercial Terms and Jacana IT Solutions will use reasonable efforts to supply the Works by the due date and on a timely basis. Time is not of the essence unless agreed in writing.

3.2 Where the Works are software, then:

3.2.1 upon delivery by Jacana IT Solutions to Client of the Works for the final acceptance testing, the Client shall have a period of 5 business days following delivery to inspect the Works (and in accordance with any agreed acceptance tests set out in a Commercial Terms if applicable). Client shall notify Jacana IT Solutions immediately if a Defect exists, whereupon Jacana IT Solutions shall, as Client's exclusive remedy, correct and redeliver the Works (or applicable part thereof) as soon as reasonably practicable. If Client does not notify Jacana IT Solutions of any Defect within 5 business days following delivery then Client shall be deemed to have accepted the Works; and

3.2.2 Jacana IT Solutions shall correct any Defect without charge for a period of fourteen (14) days after acceptance or deemed acceptance of the Works. During this warranty period, Jacana IT Solutions shall, as Client's exclusive remedy, correct the Works (or applicable part thereof) as soon as reasonably practicable. With respect of any Defect or bug that materially impacts on the operability of the Works which is discovered after the warranty period, then the parties shall agree in good faith the terms upon which Jacana IT Solutions may attempt to resolve the Defect or bug.

3.3 Client shall be deemed to have accepted the Works where the Works are used in a commercial or public environment.

3.4 Client shall not unreasonably withhold, delay, or condition acceptance of the Works at any time.

3.5 The Client acknowledges and agrees that the Fees payable and Jacana IT Solutions' obligations under this Agreement are agreed pursuant to the applicable specification set out in the Commercial Terms or applicable Statement of Work and, in particular, the applicable specifications, terms and requirements of the relevant mobile and/or other software application, device and/or hardware platform ("Platform") as set out in that specification or Statement of Work (if any) at the date of this Agreement ("Platform Terms").

### **4. Changes and Approvals**

4.1 In the event that Client requires any Change it shall notify Jacana IT Solutions in writing. Jacana IT Solutions shall not be required to supply any additional Works or undertake any Change until agreed in writing (including an agreement of any appropriate change to the Fees). If no agreement in respect of a proposed Change is reached in accordance with this clause, Jacana IT Solutions will continue to perform and be paid for the Works as if the Change had not been proposed.

4.2 The Client shall respond to all requests for approval promptly and within any deadline that Jacana IT Solutions reasonably stipulates. If Jacana IT Solutions receives no response within 5 (five) Working Days of any such request, Jacana IT Solutions may deem such approval to have been given.

### **5. Payment**

5.1 Jacana IT Solutions will invoice the Client as set out in the Statement of Work.

5.2 Other than in respect of the Fees due on signature of this Agreement, Client shall pay Jacana IT Solutions the Fees without deduction or set-off (together with any VAT invoiced and payable thereon) within 30 days of issue of a valid invoice. Jacana IT Solutions shall not be required to start the Works until receipt of the Fees due on signature.

5.3 Jacana IT Solutions may charge interest on any overdue payment at the rate of 4% over base rate of the Bank of England from time to time.

5.4 Without prejudice to any of its other rights under this Agreement or otherwise, Jacana IT Solutions may suspend performance of the provision of the Works and its obligations under this Agreement where the Client is overdue in paying the Fees or other costs set out in this Agreement and Jacana IT Solutions has provided written notice to the Client of such overdue sums and Client has not remedied such non-payment within 7 days of receipt of such notice. Jacana IT Solutions shall not be liable for any delay caused to the Services as a result of such suspension.

5.5 Jacana IT Solutions may charge additional Fees based on its standard rates and reasonably extend the due date for delivery of the Works, in the event of:

- 5.5.1 delays or additional works caused or required by Client including its failure to provide Jacana IT Solutions with such Client Materials, instructions or approvals as are reasonably required properly and / or on time;
- 5.5.2 changes to the cost and availability of labour, materials, services and other circumstances outside of Jacana IT Solutions' reasonable control;
- 5.5.3 Client and Jacana IT Solutions agreeing a Change;
- 5.5.4 agreed third party expenses which may be invoiced as they are incurred.

## **6. Intellectual Property Rights / Confidentiality**

- 6.1 All IPRs in Client Materials shall belong to Client or its licensors and Client grants Jacana IT Solutions a non-exclusive, sub-licensable licence to use the Client Materials for all purposes relating to the Agreement and the Works.
- 6.2 Subject to full payment and receipt in cleared funds by Jacana IT Solutions of the Fees, all IPRs in Client Owned Works shall belong to and vest in Client, and this clause 6.2 shall operate by way of assignment to the Client of the IPRs in the Client Owned Works on final payment of the Fees to Jacana IT Solutions.
- 6.3 All IPRs in the Licensed Works will belong to and vest in Jacana IT Solutions or its third party licensors.
- 6.4 Subject to full payment of the Fees and receipt in cleared funds by Jacana IT Solutions, Client shall be granted a personal, non-transferable, limited non-exclusive licence to use the Licensed Works (and where the Works are software, such licence shall be for use in compiled form), only in and as part of the Works, and for the ordinary use, exploitation and operation of the Works as envisaged under the Commercial Terms (namely, the specific project in question the Works have been provided for). Where the Licensed Works include film produced by Jacana IT Solutions, then such rights of use shall be specified in a Statement of Work.
- 6.5 Other than to the extent permitted by applicable law, Client shall not amend, modify or decompile the Licensed Works or otherwise use or exploit them in any way that is inconsistent with the foregoing licence.
- 6.6 Client acknowledges that Jacana IT Solutions may use third party software and/or open source software in and as part of the Works. Such third party and open source software shall be incorporated as part of the Works in accordance with their licence terms, and Client shall be granted the right and ability to make use of the same only on the licence terms applicable to such third party or open source software as notified by Jacana IT Solutions to Client. Client further acknowledges that Jacana IT Solutions gives no other warranties or undertakings in relation to the third party or open source software.
- 6.7 Each party undertakes that it will keep secret and confidential the terms of the Agreement and any information supplied by either party in connection with the Agreement or in connection with the business of the other and in connection with the Works and shall only disclose such information or part thereof (except to its own employees and advisers and, where disclosed by Jacana IT Solutions, to any authorised Client Suppliers and then only on a need to know basis) with the other party's prior written consent provided that this clause shall not extend to information which was and can be shown to be rightfully in a party's possession prior to the commencement of the negotiations leading to the Agreement or which is in the public domain (other than as a result of a breach of this clause).
- 6.8 Unless otherwise agreed in writing by Jacana IT Solutions, the Client shall be responsible for obtaining all legal, regulatory, clearance or other advice relating to the Works (including any financial services or other industry specific laws and regulations) and for undertaking such trademark or other searches as it may be prudent to conduct. Notwithstanding any other provision of this Agreement, Jacana IT Solutions shall have no liability to the Client under or in connection with this Agreement for the failure to obtain such advice or conduct such searches, or for the interpretation or results of such advice or searches. In addition, the registration of any IPR in the Works (including trademarks, registered designs or otherwise) shall be the Client's sole responsibility and completed at the Client's sole cost.

## **7. Liability and Warranty**

- 7.1 Subject to the remaining provisions of this Clause, Jacana IT Solutions warrants that:
  - 7.1.1 it shall supply the Works with reasonable skill and care;
  - 7.1.2 the Works shall accord materially with the Commercial Terms on delivery;
  - 7.1.3 shall be faithful to the overall design proposal and commensurate with the budget for the Works;
  - 7.1.4 it shall not infringe any third party intellectual property rights (subject to Clause 7.2) in the Works created by Jacana IT Solutions.

- 7.2 Jacana IT Solutions gives no warranty or representation in connection with any third party software patent.
- 7.3 Nothing in the Agreement shall exclude or limit liability for fraud or death or personal injury caused by negligence or for a deliberate personal repudiatory breach of this Agreement or for any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 7.4 Subject to Clause 7.3, Jacana IT Solutions' aggregate liability howsoever arising under or in connection with this Agreement and all related Commercial Terms and Statements of Work or otherwise, for any and all loss or damage direct or otherwise and howsoever caused whether in tort, contract or otherwise, that is not or cannot be excluded shall not exceed the greater of: (a) £500,000 or (b) Fees invoiced by Jacana IT Solutions to Client for the Works in the 12 months immediately prior to such liability arising, and in respect of the Works to which the claim arises (excluding any charges in respect of any third party costs, including production or media buying spend).
- 7.5 Notwithstanding anything else to the contrary in this Agreement, Jacana IT Solutions shall not be liable for and gives no warranty or representation in respect of:
- 7.5.1 any indirect, incidental, special or consequential loss or damage, loss of profits, business, revenue, data or use, incurred by Client or any third party, whether in an action in contract or tort or otherwise;
- 7.5.2 any adaptation or modification of the Works not made by Jacana IT Solutions;
- 7.5.3 the operation of the Works on or with any media, platform, software or hardware other than that for which they were created;
- 7.5.4 any unauthorised access by a third party to the Works or Client's systems through the Works and any failure of Client to adopt adequate security;
- 7.5.5 whether the Works will be uninterrupted or error-free and Jacana IT Solutions shall not in any event be liable for interruptions to the Works.
- 7.6 Jacana IT Solutions will not be liable in any amount for failure to perform any obligation hereunder if such is caused by the occurrence of any unforeseen contingency beyond the control or reasonable control of Jacana IT Solutions including Internet, communications and power outages, fire, flood, war or act of God.
- 7.7 Except as expressly stated in these Standard Terms and Conditions, Jacana IT Solutions does not give any other warranty in respect of the Works and all other warranties, terms, representations and conditions, whether express or implied, are excluded to the fullest extent permitted by law.
- 7.8 The Client accepts full legal responsibility in respect of any advertising approved by it for publication and will indemnify Jacana IT Solutions in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the advertising by the Client for advertising purposes.
- 7.9 Any indemnity from Jacana IT Solutions in respect of any third party claims under this Agreement shall be conditional upon the Client: (i) providing Jacana IT Solutions with written notice of such claim or issue; (ii) allowing Jacana IT Solutions to have sole conduct of any claim and selecting legal counsel and any defence proceedings in relation to such claim; (iii) providing all reasonable assistance and co-operation in defending such claim, at Jacana IT Solutions' cost; and (iv) the Client not doing or omitting to do anything or attempting to settle such claim which may prejudice Jacana IT Solutions and/or its ability to defend such claim.
- 7.10 Jacana IT Solutions may procure for the Client the right to continue using any Works which are the subject of a third party intellectual property right claim, or, at Jacana IT Solutions' discretion, replace or modify those Works so that they are no longer infringing. Should Jacana IT Solutions fail to procure such a right or modify or replace those Works to the extent necessary to resolve a claim, Jacana IT Solutions may, at its option, terminate the licence to use the Works and refund the Client such proportion of fees as were paid by the Client in respect of those Works and, notwithstanding anything to the contrary in this Agreement, this shall represent the Client's exclusive remedy in respect of such claim.
- 7.11 Jacana IT Solutions shall not provide any ongoing support, maintenance and/or hosting except to the extent that the same is provided for in the applicable Commercial Terms or Statement of Work(s).

## **8. Client Materials and Third Party Content**

- 8.1 Client warrants that it is fully entitled to grant Jacana IT Solutions the right to use Client Materials hereunder and undertakes to indemnify and hold harmless Jacana IT Solutions in full and defend at its own expense Jacana IT Solutions against all costs, damages and losses incurred by it arising out of its use of Client Materials.

8.2 Unless agreed otherwise in writing, Client shall be responsible for the payment of any third party licence fees of materials or software used in the Works.

## 9. **Termination**

9.1 This Agreement shall continue for the Term (if any) subject to clause 9.2 below.

9.2 Either party may terminate the Agreement or any Commercial Terms (or applicable part thereof) in the event that the other materially breaches any term (including non-payment of any sum due) and fails to remedy the same within 28 days of receiving written notice of the same. In the event that Client fails to make any payment due hereunder by the due date therefor Jacana IT Solutions shall be entitled to suspend the provision of all or part of the Works until such time as such payment is received in full.

9.3 Except as set out at clause 9.2, Client may not cancel the Works or otherwise terminate the Agreement. Should Client be permitted to cancel or otherwise terminate the Agreement or any Commercial Terms under the applicable Commercial Terms, Client shall in any event pay Jacana IT Solutions for all Works and Services provided up to and until the end of the applicable cancellation or termination period, plus one third of the remaining budget (the parties agree that this fraction of the remaining budget is a genuine pre-estimate of the likely loss that Jacana IT Solutions is likely to suffer in the event of early cancellation or termination).

9.4 Each set of Commercial Terms and/or applicable Statement of Work shall incorporate the Standard Terms and Conditions.

9.5 The termination or expiry of any Commercial Terms shall not affect this Agreement or any other Commercial Terms. Unless expressly agreed otherwise between the parties, upon the termination or expiry of this Agreement, all Commercial Terms shall also automatically terminate upon the effective date of termination of this Agreement.

### *Consequences of Termination*

9.6 In addition to any fees payable pursuant to Clause 9.3 in relation to termination for convenience, upon termination of this Agreement or any Commercial Terms by the Client, Jacana IT Solutions will be paid Fees on a proportional basis for Services performed and/or Works provided up to and including the effective date of termination together with its reasonable, unavoidable third party costs incurred up to such date. Jacana IT Solutions shall use reasonable endeavours to mitigate all expenses which have been incurred prior to, or which might otherwise be incurred after, the date of termination notice served by the Client under this Clause.

## 10. **General**

10.1 In these terms and conditions "including" means including without limitation.

10.2 These terms and conditions apply to the exclusion of and replace all other terms or conditions of contract Client may propose and shall not be varied unless agreed in writing and signed by Jacana IT Solutions.

10.3 In the event of any conflict between the Commercial Terms, these Standard Terms and Conditions and any Statement of Work, then the following order of priority shall apply:

10.3.1 any Special Conditions in the Commercial Terms

10.3.2 Commercial Terms other than the Special Conditions;

10.3.3 these Standard Terms and Conditions;

10.3.4 any Statement of Work; then

10.3.5 any schedule or appendices to any Statement of Work.

10.4 Nothing in the Agreement shall be deemed to constitute a partnership or agency relationship and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other.

10.5 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party to the address shown in the Commercial Terms (or such other address as is notified to the other party in writing). Any notice shall only be treated as having been served if:

10.5.1 delivered by hand, on delivery; or

10.5.2 sent by registered or first class post or recorded delivery 3 (three) Working Days after posting.

- 10.6 This Agreement, the Commercial Terms and the Schedules (including any Statements of Work) constitute the sole and entire understanding of the parties in relation to the subject matter of this Agreement and supersede all previous agreements, representations and arrangements between the parties (either oral or written) with regard to the subject matter of this Agreement. The parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated in this Agreement. Each party irrevocably and unconditionally waives any rights it may have to claim damages and/or to rescind this Agreement for any misrepresentation in relation to the subject matter of this Agreement whether or not contained in this Agreement or for breach of warranty not contained in this Agreement unless such misrepresentation or warranty was made fraudulently. This Agreement may only be amended or supplemented in writing and signed by an authorised representative of both parties.
- 10.7 If at any time any part of the Agreement is or becomes unenforceable, such part will at Jacana IT Solutions' option be construed as far as possible to reflect the parties' intentions or severed from the Agreement and the remainder of the provisions will remain in full force and effect.
- 10.8 No forbearance, delay or indulgence by either party in enforcing the provisions of the Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach.
- 10.9 No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 10.10 Client shall not assign, or in any way transfer its rights under, the Agreement in whole or in part without the prior written consent of Jacana IT Solutions.
- 10.11 No person who is not a party to the Agreement shall be entitled to enforce any provision pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 10.12 This Agreement is made and shall be construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.