



1 Definitions and interpretation

- 1.1 The following terms shall have the following meanings for the purposes of this agreement:
- 1.1.1 **'Fundament'** means Thomas Solutions Limited (Company Registration No 05197650) of Prospect House, 2 Brookfield Lane, Cotham, Bristol, BS6 5PD trading as Fundament IT Consultancy
- 1.1.2 **'The Customer'** means the representative of the organisation or individual paying for the service named on the Specification of Works and any other person who shall be notified to Fundament as an authorised representative from time to time. Decisions taken by any such representative shall be considered as binding on the Customer
- 1.1.3 **'Insolvency'** means the Customer in a position where it is unable to pay its debts or has a winding up petition issued against it or has a receiver administrator or administrative receiver appointed to it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him
- 1.1.4 **'Payments'** mean the amounts specified in the Specification of Works
- 1.1.5 **'Preliminary Work'** means all work done in the preparatory stages of the project
- 1.1.6 **'Services'** means all IT consultancy, project management and allied services carried out by Fundament
- 1.1.7 **'The Specification of Works'** means the detailed specification of work to be carried out by Fundament for the Customer
- 1.1.8 **'The Work'** means the Services carried out by Fundament for the Customer in accordance with the Specification of Works
- 1.1.9 **'The Goods'** any ancillary products supplied by Fundament to the Customer
- 1.1.10 **'Confidential Information'** means all confidential information relating to the business organisation, transactions, finances, technology, processes, specifications, methods, designs, formulae, intellectual property, technology and business activities or affairs, of and concerning the Customer and its customers and suppliers.
- 1.1.11 **'Project Design Work'** means the preparation by Fundament in accordance with general specifications supplied by the Company of a detailed project plan or information specification including sketches, project development and production drawings, models, prototypes, ideas, data, plans, concepts, designs, technical information, inventions.
- 1.1.12 **'Rights'** means all rights to any intellectual property acquired or developed in respect of the Project Design Work (whether or not registered or capable of registration) including but not limited to designs, trade marks, copyright, patents and specifications.
- 1.2 The Specification of Works forms part of this agreement and shall have effect as if set out in full in the body of these Conditions and any reference to this agreement includes the Specification of Works.
- 1.3 Headings contained in this agreement are for reference purposes only and should not be incorporated into this agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.6 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- ## 2 Appointment
- The Customer appoints Fundament to carry out the Work in return for the Payments.

3 Fundament's obligations

- 3.1 To provide the Services in accordance with the Specification of Works. In performing these obligations:
- ### 3.2 Confidentiality
- 3.2.1 Not at any time during or after the Term to divulge or allow to be divulged to any person or make use of any Confidential Information gained in the course of providing the Services and the Work.
- ### 3.3 Indemnity and Disclaimer
- To indemnify and keep indemnified the Customer from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Customer resulting from a breach of this agreement by Fundament including any act neglect or default of Fundament's employees or agents provided that Fundament shall have no liability:
- (i) in respect of loss of information or corruption of data or damage whether or not caused by neglect or default of Fundament its servants or agents; and
 - (ii) for consequential loss or damage howsoever caused for the delay or failure on the part of third party suppliers; and
 - (iii) for any damage caused to a server or computer equipment where the Customer has specifically asked Fundament to carry out work to the server or equipment whether or not caused by neglect or default of Fundament its servants or agents

4 The Customer's obligations

- In consideration of the Work to be rendered by Fundament under this agreement the Customer agrees:
- 4.1 to make the Payments promptly without demand deduction or set-off within 15 days of being invoiced;
- 4.2 that any instructions given to third parties on behalf of the Customer by Fundament shall be deemed to have been given by Fundament as agent for the Customer.
- 4.3 to make available to Fundament free of charge such office and other facilities at its premises as is necessary for the purpose of enabling Fundament carry out the Work.
- 4.4 to reimburse Fundament such out of pocket expenses incurred and reasonably evidenced in the provision of materials for the Work and in research and travelling on the Customer's business or as set out in the Specification of Works

5 Determination

- 5.1 This agreement may be determined by either party by 30 days written notice.

6 Payment

The Customer shall make payment to Fundament as follows:

- 6.1 All work carried out shall be charged as per the Specification of Works. This includes the Work and all Preliminary Work whether or not the Customer agrees to that work being taken forward to production.
- 6.2 Fundament shall be entitled to levy invoices on a monthly basis for ongoing Work irrespective as to whether the work shall have been completed. Payment is due to Fundament within 15 days of the date of each invoice. Fundament reserves the right to charge interest at the rate of 5% per annum above the base rate for the time being of Barclays Bank plc upon any sums outstanding after this time.
- 6.4 Any additional work required of Fundament by reason of the Customer supplying inadequate instructions
- 6.5 Should the Work be suspended or delayed by the Customer for any reason for a period extending beyond 30 days Fundament shall be entitled to immediate and full payment for work already carried out,



7 VAT

- 7.1 All sums payable under this agreement unless otherwise stated are exclusive of VAT and other duties or taxes.
- 7.2 Any VAT or other duties or taxes payable in respect of such sums shall be payable in addition to such sums.

8 Termination for breach

The following obligations are conditions of this agreement and any breach of them shall be deemed a fundamental breach which shall determine this agreement immediately and the rights and liabilities of the parties shall then be determined in accordance with clause 9

- 8.1 Failure on the part of the Customer to make punctual payment of all sums due to Fundament under the terms of this agreement;
- 8.2 Failure on the part of Fundament or the Customer to observe any obligation under this agreement not requiring Notice to be served and in the case of obligations requiring Notice to be served failure to comply with the terms of any Notice;
- 8.3 The levying of any distress or execution against the Customer or the making by him of any composition or arrangement with creditors or being a company the Customer's liquidation.

9 Termination consequences

In the event of this agreement being determined whether by effluxion of time Notice breach or otherwise:

- 9.1 The Customer shall immediately pay to Fundament all arrears of the Payments and any other sums due under the terms of this agreement, and
- 9.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this agreement and the determination of this agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

10 Miscellaneous

- 10.1 Ownership and Retention of Title
- 10.1.1 The ownership of and sole rights to the Rights or registration of the Rights shall only be vested in the Customer from the date of final payment to Fundament for the Work and the Customer shall not be entitled to dispose of or disclose to a third party (without the consent of Fundament) details of and information concerning the Project Design Work or the Work until such time as such payment has been made in full. Until this date the Rights remain vested in Fundament may effect and be responsible for the registration and other protection of the Work as it thinks fit.
- 10.1.2 Goods shall remain Fundament's property until the Customer has paid for them and discharged all other debts owing to Fundament.
- 10.1.3 If the Customer or the Customer's agent shall sell the Goods before they have been paid for in full they shall hold the proceeds of sale upon trust for Fundament in a separate account until any sum owing to Fundament has been discharged from such proceeds.
- 10.1.4 Without prejudice to other remedies in respect of all unpaid debts due from the Customer to Fundament, Fundament shall have a general lien on all goods and property of or provided by the Customer in his possession (whether worked on or not) and shall be entitled on the expiration of 14 days notice to dispose of such goods or property as agents of the Customer in such manner and at such price as he thinks fit and to apply the proceeds towards such debt and shall when accounting to the Customer for any balance remaining be discharged from all liability in respect of such goods or property. materials specially ordered and any other additional costs.

10.9 Force majeure

Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this agreement impossible whereupon all money due under this agreement shall be paid immediately and in particular:

- 10.9.1 the Customer shall immediately pay to Fundament all arrears of the Payments, and
- 10.9.2 each party shall be liable to pay to the other damages for any breach of this agreement and all expenses and costs incurred by that party in enforcing its rights under this agreement.

10.10 Severance

If any provision of this agreement is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of Fundament it may be severed from this agreement

10.11 Whole agreement

Each party acknowledges that this agreement and the Conditions contain the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

10.12 Supersedes prior agreement

This agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

10.13 Notices

All notices to be given under this agreement shall be in writing and shall either be delivered personally or sent by first class or airmail prepaid post or by telex, cable or facsimile transmission and shall be deemed duly served:

- 10.13.1 in the case of a notice delivered personally, at the time of delivery;
- 10.13.2 in the case of a notice sent inland by first class prepaid post, two clear business days after the date of dispatch

Each notice shall be addressed to the address of the party concerned set out in this agreement or to such other address as that party shall have previously notified to the sender.

10.14 Right to assign

This agreement shall not be capable of assignment by the Customer. Fundament however reserves the right to appoint or transfer to a third party to perform its obligations under this agreement

10.15 Proper law and jurisdiction

This agreement shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.

10.16 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.



10.4.7 Where the Customer is in breach of these terms or performs any act of bankruptcy or insolvency Fundament reserves the right to approach the Customer's agent or any third party and to offer the Work directly to them notwithstanding the fact that this will involve advising the third party that the Customer is in breach or default.

10.5 Claims

10.5.1 Advice of damage delay loss of goods in transit or non-delivery must be given in writing to Fundament within 3 clear days of delivery or in the case of non-delivery within 3 days of notification of despatch of the goods.

10.5.3 In the event of any claims or rejections Fundament reserves the right to inspect the Work within 14 days of the claim or rejection being notified.

10.6 Liability

10.6.1 In so far as is permitted by law where the Work is defective for any reason including negligence Fundament's liability (if any) shall be limited to rectifying such defect or crediting its value against any invoice raised in respect of the Work.

10.6.2 Where Fundament performs its obligations to rectify defective Work under this condition Fundament shall not be liable for indirect loss consequential loss or third party claims occasioned by defective work and the Customer shall not be entitled to any further claim in respect of the Work nor to repudiate the contract refuse to pay for the Work or cancel further deliveries.

10.6.3 Fundament shall not be liable for indirect loss consequential loss or third party claims occasioned by delay in completing the Work or for any loss to the Customer arising from delay in transit whether as a result of Fundament's negligence or

11 Arbitration

All disputes or differences which at any time arise between the parties whether during the Term or afterwards touching or concerning this agreement or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this agreement shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institution of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.