

ADVANSYS LIMITED

TERMS AND CONDITIONS FOR

DESIGN, DEVELOPMENT, HOSTING AND SUPPORT SERVICES (TERMS)

These Terms (including any schedules attached to it and any documents in which these Terms may be referred to) set out the terms and conditions pursuant to which Advansys Limited of Building 4 Millars Brook, Molly Millars Lane, Wokingham with registered number 03985924 (“**Supplier**”) agrees to provide design, development, hosting and support services (as agreed from time to time) (“**Services**”) to the customer (as indicated in the quotation or invoice) (“**Customer**”). These Terms govern and apply to the contract between the Supplier and the Customer.

1. SCOPE OF THE SERVICES

1.1 The Supplier shall provide such of the design, development, hosting and support services in relation to the website to be designed, developed or hosted by the Supplier (“**Site**”) as set out in the Supplier’s quotation or invoice (“**Services**”).

1.2 Once the Services have been agreed and signed, no amendment shall be made to it except in accordance with these Terms.

1.3 The Supplier shall use reasonable endeavours to meet any performance dates or milestones specified in the Services, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence.

1.4 In the event the Supplier supplies as part of the Services third party products, these are supplied subject to the relevant licensor’s standard terms and the Customer hereby agrees to accept and comply with such terms.

1.5 Any request to change the scope of the Services shall require a subsequent quotation or invoice defining the additional Services.

2. CUSTOMER RESPONSIBILITIES

2.1 The Customer shall pay all fees due promptly in accordance with these Terms.

2.2. The Customer acknowledges that the Supplier’s ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer (or a third party on behalf of the Customer) provides to the Supplier. The Customer further acknowledges and agrees that the Supplier shall not be liable for any delays in implementing the Services resulting from the Customer's failure or delay to fulfill any of its obligations.

2.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay

in the performance of any of its obligations under this agreement, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

2.4 The Customer shall:

- (a) without undue delay, provide the Supplier with access to, and use of, all information, data and documentation reasonably required by the Supplier for the performance by the Supplier of its obligations under these Terms;
- (b) instruct, manage and ensure the co-operation of any third parties acting on behalf of the Customer;
- (c) be responsible for the accuracy and completeness of the content provided to the Supplier by the Customer from time to time for incorporation in the Site (“**Materials**”) in accordance with clause 10;
- (d) access the system using a single licenced login, unless additional user licences have been purchased;
- (e) comply with all applicable laws and regulations.

2.5 The Customer shall not:

- (a) exceed its allocated bandwidth, in the event such allocation is being exceeded the supplier shall have the right to either suspend service or request that the Customer moves to a server with sufficient performance capacity upon payment of any additional fees and charges;
- (b) employ programmes that consume excessive system resources;
- (c) use a single login over multiple sessions.

3. DEVELOPMENT AND ACCEPTANCE OF SITE

3.1 The Supplier shall run acceptance procedures in the design, development and “go live” of the Site. The procedure set out in this clause 3 shall be repeated in respect of any further development works agreed by the parties from time to time.

3.2 Acceptance of the Site shall occur when the Site has passed or is deemed to have passed the applicable acceptance tests. The Supplier shall notify the Customer when the tests have been passed.

3.4 If any failure to pass the acceptance tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer’s sub-contractors or agents for whom the Supplier has no responsibility (“**Non-Supplier Defect**”), the Site shall be deemed to have passed the acceptance tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.

3.5 Acceptance of the Site shall be deemed to have taken place upon the earliest occurrence of any of the following events:

- (a) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
- (b) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of ten working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests.

4. PROJECT MANAGEMENT

4.1 Each party shall appoint a single project manager who shall:

- (a) provide professional and prompt liaison with the other party; and
- (b) have the necessary expertise and authority to commit the relevant party.

4.2 The project managers shall communicate at least once every week until Acceptance. Minutes shall be documented by the Supplier and these shall be made available to the Customer upon request.

5. CHARGES AND PAYMENT

5.1 The Supplier shall issue VAT invoices in respect of the charges as set out in the relevant quotation or invoice, and the Customer shall pay to the Supplier the Charges set out in such Supplier's invoice within 14 days of the date of the Supplier's invoice, save for the initial Invoice payment for which shall be required upfront in advance of the Services.

5.2 All Charges are quoted exclusive of VAT.

5.3 If the Customer fails to pay any amount payable by it under these Terms, the Supplier shall be entitled, but not obliged, to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 8% per annum above the base (reference) rate. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

5.4 It is the responsibility of the Customer to ensure all payments are settled by the appropriate due dates as indicated on the relevant invoices. The Supplier reserves the right to suspend any Services where payment is delayed and shall not be liable for any losses on the part of the Customer that may be caused or may arise as a result of such suspension.

6. WARRANTIES

6.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform these Terms.

6.2 The Supplier shall perform the Services with reasonable care and skill.

6.3 The Supplier warrants that the Site will perform in accordance with the Site specification from Acceptance. If the Site does not so perform within the first two weeks of go-live, the Supplier shall, for no additional charge, carry out any work necessary in order to ensure that, to the Supplier's sole reasonable opinion, the Site substantially complies with the Site specification. Any additional defects shall be remedied in accordance with a separate Support Contract.

6.4 The warranty set out in clause 6.3 above shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site specification is caused by any Materials or Non-Supplier Defects.

6.5 These Terms set out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into these Terms or any collateral contract (whether by statute or otherwise) are hereby expressly excluded to the fullest extent permitted by law.

6.6 The Supplier does not warrant that the servers or use of the internet will be free from defects, unauthorized users or hackers.

7. LIMITATION OF REMEDIES AND LIABILITY

7.1 Nothing in these Terms shall operate to exclude or limit the Supplier's liability for:

- (a) death or personal injury caused by its negligence; or
- (b) fraud; or
- (c) any other liability which cannot be excluded or limited under applicable law.

7.2 To the fullest extent permitted by law, the Supplier excludes and shall not be liable to the Customer for any damage to software, damage to or loss of data (and the Customer is sole responsible for taking necessary back-up of all data), loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage arising out of or in connection with the provision or lack of provision of the Services or any part thereof or the operation or lack of operation of the Site. The Supplier furthermore excludes all liability for non-receipt or misrouting of email.

7.3 Subject to clauses 7.1 and 7.2 above, the Supplier's aggregate liability in respect of claims based on events in a calendar year arising out of or in connection with these Terms or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 50% of the total charges payable by the Customer to the Supplier under these Terms in the calendar year in which the claim is made. The Customer acknowledges that the above limitation is fair and reasonable given the circumstances including price of the Services.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Unless the parties agree in writing otherwise, all Intellectual Property Rights in the Site (including in the content of the Site, content management systems, software, code and scripts), but excluding the Materials, arising out of or in connection with the provision of the Services, shall be the property of the Supplier, and the Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of using the Site. For the purpose of these Terms "**Intellectual Property Rights in the Site**" mean and include all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off arising out of or in connection with the Site.

8.2 The Customer shall indemnify and keep indemnified and harmless the Supplier its officers, directors and employees against all damages, losses and expenses arising as a result of any:

- (a) delay in providing any of the Materials, or Acceptance and
- (b) action, claim or alleged claim that the Materials infringe the Intellectual Property Rights of a third party.

8.3 In the event the Supplier has notice of a claim in accordance with the provisions of clause 8.2, the Supplier shall:

- (a) notify the indemnifier in writing of the claim;
- (b) make no admissions or settlements without the Customer's prior written consent;

(c) give at Customer's request and expenses all information and assistance as Customer may reasonably require.

9. SITE CONTENT

9.1 In the event the Customer updates the Site from time to time, the Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) ("**Inappropriate Content**").

9.2 The Supplier shall only grant the Customer limited access to the Server via the Content Management System ("**CMS**") in order to update information held on the Site.

9.3 The Supplier shall include only Materials on the Site. The Customer acknowledges that the Supplier has no control over any content placed on the Site by visitors to the Site and does not purport to monitor the content of the Site. The Supplier reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

9.4 The Customer shall indemnify and keep indemnified and harmless the Supplier its officers, directors and employees against all damages, losses and expenses arising as a result of any action, claim or alleged claim that the Materials constitute Inappropriate Content.

9.5 The Supplier may include the statement and/or link "Designed by advansys" or similar on the home page of the Site. The Customer shall not remove nor change the statement and/or link without the Supplier's prior written consent.

10. DATA PROTECTION

10.1 The Supplier agrees that, to the extent it processes any Personal Data as defined in the Data Protection Act 1998 on behalf of the Customer:

- (a) it shall act only on instructions from the Customer; and
- (b) it has taken all reasonable and appropriate care against unauthorised or unlawful processing of Personal Data.

11. TERM AND TERMINATION

11.1 These Terms shall commence on the date set out in the Services and shall (subject to earlier termination pursuant to this clause 11) continue unless terminated in accordance with the provisions of this clause.

11.2 Either party may terminate these Terms immediately at any time by written notice to the other party if:

- (a) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or
 - (b) that other party:
 - (i) ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
 - (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party;
- or

- (iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
- (iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
- (v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

11.3 On termination of these Terms by the Supplier, all licences granted by the Supplier under this agreement shall terminate immediately.

11.4 On expiry or termination of these terms by the Supplier, the Supplier shall promptly return all Materials to the Customer, and shall provide to the Customer an electronic copy of the Site (including all content on the Site). The Supplier shall provide such assistance in transferring the hosting of the Site to the Customer or another service provider, subject to the payment of the Supplier's expenses reasonably incurred.

11.5 In respect to design and development Services:

- (i) In the event the Customer wishes to terminate or cancel any part of the Services after commencement but before completion of the Services then Customer shall pay for the proportion of work undertaken by the Supplier up until the point of cancellation or termination subject to a minimum charge of no less than 50% of the total Charges for the Services.
- (ii) In the event the Customer wishes to delay, pause or place on hold the Services, the Customer shall be required to pay for any works not paid to date. If the period of suspension or delay exceeds 3 months, upon recommencement the remaining Services shall be subject to a minimum of 20% increase in charge.
- (iii) If the Customer is un-contactable for a period exceeding 3 months, the Supplier shall reserve the right to terminate the Services and retain any payments made to date.

11.6 In respect to hosting and support Services:

- (i) In the event the Customer wishes to cancel or terminate any part of the Services, the Supplier shall require a period of no less than 30 days notice to be provided in writing.
- (ii) The Supplier reserves the right to review the status and suitability of the Services at any point based upon the demands and complexity of the Customer's Site.

12. FORCE MAJEURE

12.1 A party who becomes aware of any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war) ("a Force Majeure Event") which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under these Terms shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

13. CONFIDENTIALITY

13.1 Customer shall protect the Confidential Information against unauthorised use or disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

13.2 Confidential Information may be disclosed by the Customer to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

13.3 The obligations set out in this clause 13 shall not apply to Confidential Information which the receiving party can demonstrate:

(a) is or has become publicly known other than through breach of this clause 13; or

(b) was in possession of the receiving party prior to disclosure by the other party; or

(c) was received by the receiving party from an independent third party who has full right of disclosure; or

(d) was independently developed by the receiving party; or

(e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

13.4 The obligations of confidentiality in this clause 13 shall not be affected by the expiry or termination of these Terms.

13.5 For the purpose of these Terms, “**Confidential Information**” means and includes all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

(a) identified as confidential at the time of disclosure; or

(b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure. Confidential Information shall include any identification, password and security data related to the Customer’s Site and operation of it.

14. NOTICES

14.1 A notice given under these terms shall be sent for the attention of the person and to the address, fax number or e-mail address given in the quotation or invoice (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and may be sent by fax or e-mail; or sent by first-class registered post; or (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

14.2 A notice is deemed to have been received in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class post before the end of the next business day; or in the case of first class registered post, 48 hours from the date of posting; or in the case of registered airmail, five days from the date of posting; or if deemed receipt under the previous paragraphs of this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

14.3 To prove service, it is sufficient to prove that the notice was transmitted to the fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

15. GENERAL

15.1 Unless the parties expressly agree otherwise, the Supplier shall be entitled to use the name of the Customer and Services provided as it may deem appropriate including in media releases, public announcements and other promotional or marketing material.

15.2 Neither party may assign or transfer any of its rights or obligations under these Terms without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, save that nothing in these Terms shall restrict the Supplier from assigning, transferring or otherwise disposing of these Terms in the event of a solvent re-organisation, merger with or acquisition by a third party.

15.3 Except as provided in this clause 15.3, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into these Terms ("**Misrepresentation**"), and neither party shall have any liability other than pursuant to these Terms. Nothing in these Terms shall exclude or limit either party's liability for any Misrepresentation made knowing that it was untrue. Each party's liability for Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under these Terms, shall be subject to the limit set out in clause 7.

15.4 These Terms are made for the benefit of the parties to it and are not intended to benefit, or be enforceable by, any other person.

15.5 The Supplier may vary the Terms at any time by giving written notice to the Customer. The Customer shall have 30 days from the day of notification to terminate the contract with the Supplier provided that the Customer pays all outstanding invoices and monies due for Services provided.

15.6 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

15.7 These Terms and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Terms or their subject matter or formation (including non-contractual disputes or claims).

15.8 References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a website. **Writing** or **written** includes faxes and email.