

Builtvisible.

Terms and Conditions

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In these conditions ‘Builtvisible’, ‘we’ ‘our’ and ‘us’ shall mean Builtvisible Limited, company registration number 7016136, its associated companies and, in all relevant cases, any successor or assignee.

The expressions ‘you’ or ‘your’ refer to you, our client.

1. CONTRACT BETWEEN US

- 1.1. These terms and conditions together with:
- any letter/email which we may send you confirming your appointment of us and outlining your requirement for our services (‘Engagement Letter’), and
 - any Statement of Work which we may send you with a detailed analysis of the scope and cost of our services (“Statement of Work”) constitute the contract between you and Builtvisible.
- 1.2. Our commencement or execution of work pursuant to the Engagement Letter and /or Statement of Work shall establish a contract for the supply and purchase of those services on these conditions. Your standard terms and conditions (if any) attached to, enclosed with, or referred to in any communications between us shall not govern the contract between us.
- 1.3. Our Services may be:
- specific to a Project and/ or
 - provided on an on-going basis subject to Retainer (minimum 12 month Contract).

2. Interpretation

2.1. The definitions and rules of interpretation in clause 1 and in this clause apply in these terms and conditions.

- a) Contract: the contract between us as detailed in clause 1.
- b) Deliverables: all products and materials developed by us in relation to the Project/Retainer in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts) as detailed in the Statement of Work.

- c) Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, typography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- d) Pre-existing Materials: materials which existed before the commencement of the Project/Retainer.
- e) Project: the project as described in the Engagement Letter and /or the Statement of Work.
- f) Project Manager: our manager for the Project, as advised to you in writing.
- g) Project Plan: the plan including performance dates for the Project as detailed in the Engagement Letter and / or the Statement of Work.
- h) Retainer: our appointment to provide Services on an on-going basis as detailed in the Statement of Work.
- i) Statement of Work: any detailed Statement of Work we may provide to you describing the Project and setting out your requirements, the Deliverables and Builtvisible's proposed approach.
- j) Services: the services to be provided by us under the Contract.
- k) Stages: the stages of the process by which the Project is delivered as detailed in the Statement of Work.
- l) VAT: value added tax chargeable under English law for the time being and any similar additional tax.

2.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

2.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

2.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.7. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

2.8. A reference to writing or written includes faxes and e-mail.

2.9. References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

3. Application of conditions

3.1. These conditions shall:

- a) apply to and be incorporated in the Contract; and
- b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Engagement Letter, the Statement of Work or implied by law, trade custom, practice or course of dealing.

3.2. These Terms are subject to change from time to time and are updated on our website at <http://builtvisible.com>

4. Our obligations

4.1. We shall use reasonable endeavours to:

4.1.1. manage and complete the Project, and to deliver the Deliverables to you, in accordance in all material respects with the Project Plan and/or

4.1.2. provide Services in accordance with the terms of the Retainer

4.2. We will use reasonable endeavours to meet the performance dates specified in the Statement of Work, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3. We will appoint the Project Manager who shall have authority to contractually bind us on all matters relating to the Project. We will use reasonable endeavours to ensure that the same person acts as Project Manager throughout the Project, but may replace him from time to time where reasonably necessary in the interests of our business.

5. Your obligations

5.1. You shall:

- a) co-operate with us in all matters relating to the Project and or the Retainer;
- b) provide in a timely manner such access to your premises and data, and such office accommodation and other facilities, as is requested by us;
- c) provide in a timely manner such information as we may request, and ensure that such information is accurate in all material respects.

5.2. We require that you provide all approvals for agreed deliverables in a reasonable period of time in order to ensure the Project /Retainer runs smoothly and allows for maximum time for performance. If you do not comply with a request for a sign-off without good cause, you must assume responsibility for consequential delays.

5.3. Without prejudice to clause 5.2, if the performance of our obligations under the Contract is prevented or delayed by any act or omission of you or your agents, sub-contractors or employees, you will in all circumstances be liable to pay to us on demand all reasonable costs, charges or losses sustained or incurred by us (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, costs of restarting the project if put on hold for any reason, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to confirmation from us in writing of such costs, charges and losses.

5.4. You will not, without our prior written consent, at any time from the date of the Contract to the expiry of twelve months after the completion of the Services, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged by us as an employee or sub-contractor.

6. Change control

6.1. Our Project Manager shall communicate with your appointed representative at least once every fortnight to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

6.2. If either party requests a change to the scope or execution of the Services, we will, within a reasonable time, provide a written estimate to you of:

- a) the likely time required to implement the change;
- b) any variations to our charges arising from the change;
- c) the likely effect of the change on the Project Plan; and
- d) any other impact of the change on the terms of the Contract.

6.3. If we request a change to the scope of the Services, you will not unreasonably withhold or delay consent to it.

6.4. If you wish us to proceed with the change, we have no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

7.

7. Charges and payment

7.1. Services to be provided on a time-and-materials basis.

The price for Services provided on a time and material basis will be as detailed in the Statement of Work.

7.2. Services to be provided for a fixed price.

Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Statement of Work . The total price shall be paid to us in installments as set out in the Statement of Work on achieving the corresponding Stage. All amounts due under this agreement shall be paid by you to us in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). On completion of a Stage we will invoice you for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).

Once a Stage has been completed, charges for that Stage must be paid in full before the following Stage is commenced.

VAT will be added to our invoices at the appropriate rate.

Any changes or amendments beyond the specified amount of amendments as stated / included in the Statement of Work. Additional items will be estimated and charged for separately using our Change Request Form.

7.3. You agree to pay each invoice submitted to you by us in full, and in cleared funds, within 30days of receipt.

7.4. Without prejudice to any other right or remedy that we may have, if you fail to pay on the due date we may:

- a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of

Barclays Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

b) suspend all Services until payment has been made in full.

7.5. Time for payment shall be of the essence of the Contract.

7.6. All payments payable to us under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8. Intellectual property rights

8.1. All Intellectual Property Rights and all other rights in the Deliverables shall be owned by us. We hereby licence all such rights to you free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable you to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If we terminate the Contract under condition 12 this licence will automatically terminate.

8.2. You acknowledge that your use of rights in Pre-existing Materials is conditional on us obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle us to licence such rights to you.

8.3. You acknowledge and agree that we shall be entitled to exploit any material created by us under this Agreement provided that all references to and any confidential information and material provided by you are deleted. We may also make reference to the Services and to you for the purposes of marketing, advertising and PR in our promotional material and website including creds, case history and news, Facebook, LinkedIn, Twitter and other social media used by us and in any press coverage approved by us.

9. Confidentiality and our property

- 9.1. You 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 you by us or our agents, and any other confidential information concerning our business or our products which you may obtain. You will restrict disclosure of such confidential material to such of your employees, agents or sub-contractors as they need to know it, for the purpose of discharging your obligations to us, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind you.
- 9.2. All materials, equipment and tools, drawings, specifications and data supplied by us to you shall at all times be and remain our exclusive property, but shall be held by you in safe custody at your own risk and maintained and kept in good condition by you until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.
- 9.3. This condition 9 shall survive termination of the Contract, however arising.

10. Limitation of liability

- 10.1. The following provisions set out our entire financial liability (including without limitation any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
- a) any breach of the Contract howsoever arising;
 - b) any use made by you of the Services, the Deliverables or any part of them; and
 - c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without

limitation negligence) arising under or in connection with the Contract.

- 10.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3. Nothing in these conditions excludes our liability:
- a) for death or personal injury caused by our negligence; or
 - b) for fraud or fraudulent misrepresentation.
- 10.4. Subject to condition 10.2 and condition 10.3:
- a) We will not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - loss of profits; or
 - loss of business; or
 - depletion of goodwill or similar losses; or
 - loss of goods; or
 - loss of contract; or
 - loss of use; or
 - loss or corruption of data or information; or
 - any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - b) our total liability in contract, tort (including without limitation negligence or 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 shall be limited to the price paid for the Services.

11.

11. Termination

11.1. Where our Services are provided on a Retainer basis the Contract will be for an initial minimum period of 12 months from the date of commencement of the Services (“Initial Period”). After the Initial Period the Contract may be terminated by either party giving to the other one clear calendar month’s written notice of termination, such notice to expire:

- a) on the last day of a month
- b) on or after the expiry of the Initial Term.

Upon termination we will invoice you and you agree to pay within 30 days of receipt of such invoice all undisputed outstanding fees for any work that has been carried out under the Contract.

11.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
- b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent

- amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party.

12. Force majeure

We will not in any circumstances have any liability to you under the Contract if we are prevented from, or delayed in, performing our obligations under the Contract or from carrying on our business by acts, events, omissions or accidents beyond our reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

13. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

14. Severance

If any provision or part-provision of this agreement 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 this agreement.

If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

15. Entire agreement

- 15.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

16. Assignment

- 16.1. You shall not, without our prior written consent assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 16.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract.

17. Third party rights

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

18. Notices

18.1. Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or
- b) sent by fax or email.

18.2. Any notice or communication shall be deemed to have been received:

- a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- b) 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 or at the time recorded by the delivery service.
- c) if sent by fax or email at 9.00 am on the next Business Day after transmission.

18.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

19. Governing law

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

20. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).