

# TERMS AND CONDITIONS OF ENGAGEMENT WITH WHITEAPP

## DEFINITIONS

- A. "Whiteapp" is a trading name of putITout Limited, of 68 Marchmont Street, London WC1N 1AB
- B. "Customer" means the customer of putITout.
- C. "the Skills" means the planning, development and delivery, on-going support and maintenance of Information Technology [IT] applications.
- D. "Contract" means any contract for the provision of Services by putITout to or on behalf of the Customer.
- E. "Services" means the work to be undertaken and materials supplied by putITout and shall extend to and be deemed to include such advice, consultancy, development, design, products and assistance relating to the Skills provided on a 'Time & Materials' basis.

## 1 EXISTENCE OF CONTRACT

- 1.1 No Contract shall come into existence until acknowledged in writing by putITout or by the acceptance by the client of an invoice for the services undertaken.
- 1.2 These conditions shall be incorporated in the Contract to the exclusion of any terms and conditions stipulated or referred to by the Customer and whether or not these conditions are signed for or on behalf of the Customer.
- 1.3 Except as expressly provided for in this document no variation or amendment of these conditions or oral promise or commitment by putITout related to it shall be valid unless given in writing and signed by an officer of putITout.

## 2 REMUNERATION

- 2.1 The Customer shall:
  - 2.1.1 pay putITout for the project development by its personnel performing the Services,
  - 2.1.2 pay putITout for agreed administration, media and other materials supplied, licence fees of any third party incurred for software supplied, and the cost of manuals and/or equipment supplied.
- 2.2 Our normal terms of business are 50% of agreed fees billed on engagement with putITout. putITout shall then invoice for 40% upon delivery a working application functioning to agreed acceptance criteria and 10% on listing on the application store(s).
- 2.3 The Customer shall pay putITout within the timescales stipulated the invoices.
- 2.4 If, notwithstanding the above, the Customer does not pay in full on time putITout shall be entitled in its absolute discretion to suspend the provision of Services under the Contract and any Contract between putITout and the Customer.

## 3 THE PARTIES RESPONSIBILITIES

- 3.1 The Customer shall provide putITout personnel promptly with accurate and complete information concerning its operations and activities relevant to the Services, answers to queries, decisions and approvals required by putITout personnel in connection with the Services. putITout personnel are hereby granted the right of access to the Customer's staff and premises for the purposes of performing the Services pursuant to the provisions of the Contract at all reasonable times throughout the duration of the Contract.
- 3.2 Any goods or materials including software programs and documentation which are supplied by or on behalf of the Customer shall remain the property of the Customer at all times. putITout shall not have any lien or similar right in relation to any property of the Customer. Any property of the Customer which passes into the possession, power or control of putITout shall not pass out of such possession except to the Customer or as directed by the Customer. putITout shall on demand by the Customer forthwith deliver up any property of the Customer. During such period as any property of the Customer shall be in the possession, power or control of putITout it shall remain labelled as follows: "Property of the Customer", or as otherwise reasonably required by the Customer.
- 3.3 The Customer undertakes to provide putITout personnel such office space and office facilities, including computer hardware (or access to), as may be necessary to enable putITout to fulfil its obligations under the Contract.
- 3.4 The Customer undertakes to provide equipment with virus checking facilities installed to all putITout personnel working on-site. putITout personnel will make reasonable efforts to avoid the introduction of viruses. In the event that either party discovers a virus, which may or may not have passed to or from the other, the discovering party must forthwith inform the other party by written notice addressed to the individual who signed the Contract or if none, an officer of the other party if a company or partner or proprietor as appropriate.
- 3.5 The Customer agrees to notify putITout of any disputes or concerns regarding its personnel's quality of work as and when the issues arise.

3.6 The Customer shall forthwith notify putITout in writing of any change in the Customer requirements by e-mail or first class mail.

#### 4 MEETINGS

4.1 The parties shall meet together at regular intervals, dependent upon the nature of the Services to review overall progress, resolve any difficulties and discuss other important matters in connection with the Services and the Contract.

#### 5 LIABILITY

5.1 putITout shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of putITout or in any other way out of or in connection with the performance or purported performance of or a failure to perform the Contract except:

5.1.1 for death or personal injury resulting from putITout's negligence; and

5.1.2 as expressly stated in these conditions.

5.2 If the Customer is dissatisfied with any aspect of the Services provided by putITout the Customer shall forthwith notify putITout in writing and putITout shall, if in its opinion it is necessary, take corrective action.

5.3 In no circumstances shall the liability of putITout under the Contract exceed the invoice value of the Contract.

#### 6 CONFIDENTIAL INFORMATION

6.1 Information and materials pertaining to the Services or in any way to the business of the Customer shall be regarded by putITout as confidential and putITout shall not pass such information or materials on to any third party or use the same for any purpose without prior written consent of the Customer. Such confidential information shall include, without limitation information relating to the policies and commercial practice of the Customer and to specific techniques used for computer access and operation. The provisions of this clause shall survive termination or expiry of the Contract for any reason, but shall not apply to information which:

6.1.1 is, or subsequently becomes, part of the public domain, otherwise than by breach of the Contract;

6.1.2 is shown by written record to have been known to putITout at the time of disclosure by the Customer;

6.1.3 is hereafter disclosed to putITout by a third party with the lawful right to make such a disclosure;

6.1.4 putITout is required to disclose by court order or law.

#### 7 INTELLECTUAL PROPERTY

7.1 In this condition:

7.1.1 "the Routines" means development tools and/or routines not specifically developed by putITout under any Contract with the Customer

7.1.2 "Software" means source code developed by putITout under the Contract

7.2 Upon payment of all sums due from the Customer to putITout at the termination of the Contract the Customer shall have:

7.2.1 a perpetual irrevocable licence to use the Routines as part of the Software only

7.2.2 such intellectual property rights in the Software other than the Routines as is necessary for unrestricted use by the Customer its subsidiaries and affiliates only.

7.3 All rights and property in the Software not otherwise transferred to the Customer under the Contract shall vest or remain vested in putITout.

#### 8 STATUS OF PARTIES

8.1 For the purpose of the Contract, putITout shall be an independent contractor and not the servant, employee or agent of the Customer and has no power or authority to enter into any contract on behalf of the Customer.

8.2 putITout will bear exclusive responsibility for the discharge of any income tax and other taxation liability arising out of payment for work performed by it hereunder and will keep the Customer fully indemnified against payments it may be required to make by the Inland Revenue or third party as a result of a breach of this Clause.

#### 9 PERSONNEL

9.1 putITout provides Services to the Customer through its personnel.

9.2 putITout requires its personnel engaged in the provision of Services to the Customer on the Customer's site to observe all reasonable requirements and procedures notified to such personnel and/or to putITout by the Customer including without limitation those relating to attendance, dress, conduct and standard of work.

9.3 putITout shall reasonably endeavour to ensure that its personnel are competent to undertake their tasks.

9.4 The Customer shall notify putITout in writing if the Customer is dissatisfied with any of putITout's personnel

and the parties shall within 14 days thereafter seek a resolution failing which the Customer may upon reasonable grounds notify to putITout in writing ask putITout to replace the person in question working on the Contract.

#### 10 WARRANTY BY PUTITOUT

10.1 putITout warrants and represents that, by entering into and performing the Contract, it will not be in breach of any fiduciary or other contractual duty to any third party, will not be creating any conflict of interest, has the power to enter into the Contract and has obtained all the necessary approvals to do so.

#### 11 TERMINATION

11.1 The Contract may be terminated by either party giving written notice of any length to the other.

#### 11.2 EFFECTS OF TERMINATION

11.2.1 Termination of the Contract shall not affect any rights or obligations of either party which may have accrued prior to such termination.

11.2.2 On termination of the Contract and upon payment by the Customer of all sums due to putITout by the Customer under the Contract or otherwise putITout shall make available to the Customer all documentation and software (machine readable and hard copy) existing at the date of termination, whether or not completed.

11.2.3 In the event of the Contract being repudiated and/or terminated by the Customer the Customer shall pay putITout:

11.2.3.1 for the Services to and including the date of repudiation or termination whichever is the later at a value for work done calculated by the number of man-days recorded on timesheets and

11.2.3.2 the sum which putITout would have invoiced the Customer under the Contract during the period of 30 days following the repudiation of the Contract by the Customer or the expiration of the said notice or the date for the commencement of the provision of Services by putITout whichever is the later in the event that the Contract had not been repudiated or terminated and

11.2.3.3 50% of the sum which putITout would have invoiced the Customer under the Contract following the end of the period of 30 days referred to in the immediate preceding sub-clause in the event that the Contract had not been repudiated or terminated.

#### 12 NON-WAIVER

12.1 The failure of either party to enforce its rights under the Contract at any time for any period shall not be construed as a waiver of such rights.

#### 13 GOVERNING LAW

13.1 The Contract shall be governed by and construed in accordance with English Law.

13.2 In the event of a dispute, putITout and the Customer shall take all reasonable steps to resolve that dispute within the terms of the Contract. Disputes which cannot be resolved on this basis shall be resolved according to English Law.