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# TechnoPhobia Limited

## Terms and Conditions

08 June 2009

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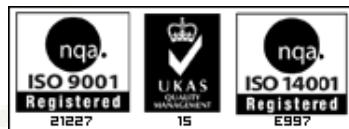
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**Catalist**

IT Department  
8 June 2009

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Registered in England and Wales Company No. 3063669  
VAT registration No. 598 7858 42  
ISO9001:2000 Accredited Company No. 21227 ISO14001:2004 Accredited Company No:  
E997

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## Agreement

**AGREEMENT made on**

**Insert Date**

**2006**

**BETWEEN:**

1. **TECHNOPHOBIA LIMITED** a company registered in England and Wales under number 3063669 whose registered office is at The Workstation, 15 Paternoster Row, Sheffield S1 2BX (“Technophobia”) and
2. **INSERT COMPANY NAME** a company registered in England and Wales under number XXXXX whose registered office is at [ ] (“the Client”); and

## TechnoPhobia Conditions

All work and services supplied by TechnoPhobia Limited ("TechnoPhobia") are provided subject to the terms and conditions (the "Conditions") set out below. The Client is advised that all work carried out by TechnoPhobia will be subject to these Conditions.

The Client's attention is drawn to section 8. Warranty and Exclusion of Liability.

## Interpretation

### 1. Definitions

**'Acceptance Date'** means the date on which the Work Package (or relevant part thereof) is accepted (or deemed to be accepted) by the Client pursuant to section 11;

**'Acceptance'** means acceptance by the Client of the Work Package (or series of Work packages) being tested pursuant to section 11 and TechnoPhobia is authorised upon acceptance to charge the Client in accordance with the payment schedule;

**'Acceptance Certificate'** means the form of certificate served on the Client by TechnoPhobia to acknowledge Acceptance and may be in any written form;

**'Agreement'** means this agreement;

**'Assumptions'** means the assumptions made in order to provide a cost estimate for a Work Package, as recorded and contained in the Project Specification;

**'Business Day'** means any day (other than a Saturday or Sunday) when banks are open for business in England;

**'Change'** means a request for a change that varies, alters or amends a previously agreed Specification and/or these Conditions. This includes, but is not limited to, changes to text, additions of pages within the site structure, or additional functionality;

**'Change Control Procedure'** means the procedure set out in Clause 4 required to be followed in circumstances where either party requires a Change;

**'Change in Law'** means any change in legislation or any applicable judgement of a relevant court of law which changes a binding precedent and in the opinion of TechnoPhobia requires a Change which was not binding prior to commencement of any Work Package but subsequently has a direct effect on the delivery of any Work Package and would cause TechnoPhobia to incur costs which it had not incorporated in any Proposal or its Charges;

**'Change Request'** means a written request by a person with the Client's Project Authority to make a Change;

**'Charges'** means the charges or fees charged by TechnoPhobia as set out in the Project Specification or otherwise chargeable by TechnoPhobia in accordance with this Agreement in consideration of work done for the Client or as a consequence of the Change Control Procedure. In the absence of an expressly agreed Charge rate the TechnoPhobia Fee Rates shall apply to all work or services supplied;

**'Client'** means the party to whom Work Packages are supplied by TechnoPhobia;

**'Client Acceptance Criteria'** means the criteria used to test the Work Package under which, when fulfilled, the Client will accept the Work Package, including the agreed level of acceptable error (as referred to in clause 8.2.2). The Client Acceptance Criteria are recorded and contained in the Project Specification;

**'Client Materials'** means any documentation, content or designs supplied by or on behalf of the Client for use by TechnoPhobia to provide Work Packages;

**'Client-ware'** means the equipment, hardware, cabling, systems and software provided by the Client or by third parties on behalf of the Client in connection with the Work Packages;

**'Competitor'** means any person or entity which in the reasonable opinion of TechnoPhobia is in direct competition with TechnoPhobia offering similar services to those referred to in this Agreement or otherwise provided by TechnoPhobia in the ordinary course of its business;

**'Confidential Information'** means but shall not necessarily be limited to all information which is not publicly known including the business, finances, technology (including without limitation the Software and documentation used for any Work Packages) trade secrets, and any other technical, commercial, or

otherwise sensitive information of either party regardless of its nature and any other Confidential Information referred to in section 15;

**'Data Protection Act (DPA)' or 'Freedom of Information Act (FOIA)' Notices** means any notices served on TechnoPhobia by the Client or which TechnoPhobia is obliged to comply with as a consequence of this Agreement or the Project;

**'Deemed Acceptance Date'** means the date the Deliverable, Service and/or Work Package is deemed to achieve Acceptance as set out in these Conditions;

**'Deliverables'** means any Site, Software, TechnoPhobia Materials, Hardware or other tangible items supplied by TechnoPhobia to the Client as listed in the Project Specification or otherwise supplied if a Specification is not used;

**'Dependencies'** means those dependencies which must be provided by the Client and are required by TechnoPhobia prior to commencement or during the delivery of any Work Package in order that TechnoPhobia is able to meet the Client's requirements as set out in the Project and Product Specifications.

**'Effective Date'** means the date agreed between the parties for the commencement of the Project as set out in the Project Specification or in the absence of an expressly agreed date, the actual start date when TechnoPhobia commenced the delivery of any Work Package;

**'Exception Plan'** means TechnoPhobia's Proposal, produced at the Client's request, that details changes to the existing Specifications and their likely impact, including additional costs, changes in timescales and changes to existing Project and Product Specifications;

**'Expiry Date'** means the date recorded in the Project Specification or the actual date (if later) of expiry of any supply of Work Packages in accordance with section 14;

**'Hardware'** means any equipment (including but not limited to Servers), cabling and IT network systems used by TechnoPhobia in connection with the Work Package;

**'Hosting Services'** means host services provided by TechnoPhobia as set out in any separate agreement to provide such services to the Client;

**'Intellectual Property Rights' or 'IPR'** means rights, title and interest in:

- (a) Patents, petty patents, utility models, semi-conductor topography rights, inventions and software;

- (b) Trade marks, trade and business names (including service marks), domain names and meta-tags, all rights in the nature of unfair competition rights or rights to sue for passing off;
- (c) Design rights (registered and unregistered);
- (d) Copyright (including copyright in programs);
- (e) Database rights;
- (f) Know-how (including trade secrets and confidential business information); and
- (g) Any similar or analogous rights to any of the above, whether arising or granted under the law of England or of any other jurisdiction; and in each case of (a) to (g) any such rights to the extent that the rights are registered, unregistered or form pending applications;

**'Known Risks'** means those risks to the successful delivery of a Work Package clearly identified at the outset of a Project and recorded and contained in the Project Specification;

**'Live Environment'** means the Client's publicly accessible web-server environment;

**'Live Sign-Off'** means the final check conducted by the Client to confirm that the Work Package accepted in User Acceptance Testing has been correctly and comprehensively transferred to the Live Environment;

**'Non-Compliance'** means an aspect of the delivery or performance of a Work Package which is not in material compliance with the Product Specification;

**'Non-TechnoPhobia Defects'** means any failure of a Work Package to meet the Client Acceptance Criteria or failure or defect in any Work Package which is caused in either case by an act or omission of the Client or by one of the Client's sub-contractors or agents or third party as part of any Third Party Services required by the Client or for any other reason for which TechnoPhobia has no responsibility;

**'Payment Milestone'** means a date for payment of Charges due at the relevant Milestone as set out in any Payment Schedule or otherwise identified by TechnoPhobia as payable by the Client;

**'Payment Schedule'** means the schedule of Charges set out in a Project Specification or otherwise identified by TechnoPhobia as payable by the Client;

**'Personal Data'** shall have the meaning given in the Data Protection Act 1998;

**'Permitted Purpose'** means to achieve interoperability of the Deliverable with another software program or hardware for the purpose of the Site as set out in the Project Specification or as varied in accordance with the Change Control Procedure;

**'Phase'** means in relation to any Project one of the key phases as identified in the Project Specification;

**'Product Specification'** means the description of the Deliverable being developed; this may be included in the Project Specification;

**'Project'** means all of the work necessary as agreed by TechnoPhobia, to deliver one or more Work Packages as set out in the Project Specification or as otherwise supplied by TechnoPhobia to the Client. For the avoidance of doubt each Work Package shall be treated as one separate contract for the purposes of TechnoPhobia's liability to the Client. These Conditions shall govern those contracts unless expressly stated to the contrary in the Project Specification or otherwise agreed in writing between the parties;

**'Project Authority'** means the authority to act, sign, send or receive documents and notices on behalf of either party including requirement changes. Personnel with Project Authority should be defined in the Project Specification, and any changes to these notified in writing

**'Project Plan'** means the timetable within which TechnoPhobia will implement the various stages of the relevant Project as defined in the Project Specification;

**'Project Specification'** means documentation that may include:

- Assumptions
- Dependencies
- Known Risks
- Quotation
- Client Acceptance Criteria
- Project Plan
- Review Schedule

- Personnel with Project Authority.
- Reporting Structure
- Exceptions to Standard Process
- Product Specification
- User Acceptance Testing Window
- Payment Schedule

By agreement the above may not be enumerated for every Work Package, and where not enumerated will be assumed to be the same (where applicable and reasonable to assume) as specified in the previous Specification;

**'Proposal'** means a non-binding indication of Services and Work Packages that TechnoPhobia is able to provide and an estimate of the related Charges;

**'Purchase Order'** means a document that details the Charges for a particular Work Package and is signed by a person with the Client's Project Authority to agree to pay those Charges. This document shall be numbered in accordance with any requirements of the Client's internal procedure;

**'Quotation'** means that part of a Project Specification which agrees the Charges for the delivery of a Work Package in accordance with the Project and Product Specifications;

**'Rush Charges'** means additional charges payable by the Client due to the Client's delay or breach of this Agreement or Non-TechnoPhobia Defect (provided that TechnoPhobia shall not be obliged to continue if such delay or breach would entitle TechnoPhobia to terminate this Agreement) which causes the Project to overrun and the Client requests TechnoPhobia to meet a particular deadline;

**'Service(s)'** means any and all of the service(s) provided by TechnoPhobia to or on behalf of the Client under this Agreement;

**'Server'** means a computer server administered by TechnoPhobia;

**'Scheduled Decision'** means a decision which is required at a particular time as identified in the Project Plan regarding the details of Client requirements as described in the Project Specification. Decisions shall be notified to Technophobia in writing;

**'Sign-Off'** means the provision of a signature by a person with the Client's Project Authority in agreement of a Specification, Change, Amendment, Exception Plan

or any other proposal or definition made by TechnoPhobia in relation to a Work Package;

**'Site'** means the Client's website as referred to in the Project Specification which is being developed as part of the Project and may also be hosted by TechnoPhobia subject to the Host Services;

**'Site Design'** means the design, colour, layout, look and feel of the Site;

**'Site Software'** means the Software for the Site as described in the Product Specification;

**'Software'** means computer programs;

**'Specification'** means either a Product and/or Project Specification;

**'TechnoPhobia Fee Rates'** shall mean TechnoPhobia's standard rates which are available upon request;

**'TechnoPhobia Materials'** means all IPR, designs, graphics, content of web pages or other materials provided by TechnoPhobia which do not form part of the Client Materials and/or Client-ware;

**'Term'** means the period from the Effective Date or, if earlier, the date TechnoPhobia commences any supply of Work Packages and until the Expiry Date or date of earlier termination in accordance with this Agreement;

**'Testing Environment'** means the Client's non-public web server environment, replicating the Live Environment as closely as possible to allow User Acceptance Testing;

**'Third Party Agreements'** means any agreements referred to in a Project Specification or otherwise which are entered into by TechnoPhobia with a third party to provide Third Party Services or enable TechnoPhobia to provide the Services as part of a Work Package;

**'Third Party Software'** means third party software referred to in a Third Party Service, if any, used by TechnoPhobia that may be listed in the Project Specification;

**'Third Party Services'** means services of a third party engaged either at the request of the Client or otherwise by TechnoPhobia to operate in conjunction with the Services or Deliverables;

**'Up-Front Costs'** means any costs, fees and/or charges incurred by TechnoPhobia on behalf of the Client in respect of any Deliverables, Services in a Work Package prior to a termination of this Agreement by the Client pursuant to clause 14.2;

**'User Acceptance Testing'** means the series of testing procedures performed by the Client to ensure that the Work Package meets the Client Acceptance Criteria;

**'User Acceptance Testing Window'** means a timeframe agreed at the outset of the Project and recorded and contained in the Project Specification during which the Client is obliged to fully evaluate the Work Package in the Test Environment and report to TechnoPhobia on whether the Client Acceptance Criteria have been met;

**'Visitor'** means a visitor to the Site;

**'Work Package(s)'** means any and all Deliverable(s) and/or Service(s) or other work done for the Client by TechnoPhobia;

**'Working Hours'** means between 9am to 5pm inclusive on a Business Day.

Headings are included for reference only and shall not affect the construction of these Terms and Conditions.

## 2. Terms

- 2.1. Subject to clause 2.2 these Conditions shall govern each Project and any Work Packages supplied by TechnoPhobia to the Client and shall supersede any previously published terms and conditions of business and shall override any terms and conditions stipulated, incorporated or referred to by the Client in its standard purchase terms or other similar document (unless expressly agreed in writing by a director of TechnoPhobia);
- 2.2. In circumstances where there is any conflict in any documents or interpretation of terms the order of precedence and priority of Project documents shall be as follows:
1. Changes agreed in accordance with the Change Control Procedure;
  2. The Specifications;

3. These Conditions;

- 2.3. Each party shall from time to time appoint a Project Manager, who shall hold Project Authority and be responsible for dealing with notices and procedures referred to in this Agreement, and notify the other party of their name and contact details (and any changes to the same). In the absence of the Client appointing a Project Manager, or other person with Project Authority, TechnoPhobia shall seek instructions from any employee of the Client with whom TechnoPhobia has been dealing in connection with the relevant Work Package and such employee shall be treated as having Project Authority and to act or receive notices on behalf of the Client for the purposes of this Agreement.

### 3. Proposals and Quotations

- 3.1. All Proposals and Quotations given by TechnoPhobia are valid for a period of 30 days from the date of issue. Should the Client's actual instructions differ from the Specification agreed when a Proposal or Quotation was given, TechnoPhobia reserves the right to alter the relevant Charges, and/or the details, including delivery dates, of any Proposal or Quotation previously given. Once the Work Package has commenced the Client must use the Change Control Procedure if they require a Change.
- 3.2. All orders for any Work Packages must be accompanied by a Purchase Order and by a Project Specification signed by both parties. Upon signature by both parties a contract between the parties is formed for that Work Package, governed by this Agreement. If, in the absence of both parties having signed the documents referred to in this clause 3.2, TechnoPhobia commences any work at the request of the Client, a contract is formed from the commencement of such work and shall be governed by this Agreement. Subject to clause 3.1 TechnoPhobia reserves the right to alter the price and/or conditions of any Proposal prior to the date the Client signs off the relevant Project Specification. TechnoPhobia shall not be obliged to perform any Work Packages until both parties have signed the relevant Project Specification.
- 3.3. All Charges quoted are exclusive of Value Added Tax which will be charged at the appropriate rate.
- 3.4. TechnoPhobia reserves the right at its discretion to refuse any order for any Work Package.

## 4. Change Control Procedure

- 4.1. All Changes shall be liable to Charges as follows:
- 4.1.1. Those requested by the Client shall be determined in accordance with the procedures in clauses 4.3 to 4.6; or
  - 4.1.2. Changes in Law will be liable to Charges proportional to the additional work that results.
  - 4.1.3. A Change required by TechnoPhobia as a consequence of any of the following:
    - i. A breach by the Client of any term or condition of this Agreement (provided that TechnoPhobia shall not be obliged to proceed with the work in such circumstances and may exercise its right to terminate this Agreement); or
    - ii. Failure by the Client to act reasonably in proceeding with any Work Package; or
    - iii. A Change to a Third Party Service or Third Party Agreement caused by any reason other than the negligence or wilful misconduct of TechnoPhobia (provided that TechnoPhobia shall be obliged to proceed with the work in such circumstances and may exercise its right to terminate this Agreement only if such Change was as a consequence of an event described in clause 4.1.3 i.)...shall be liable to Charges proportional to the additional work that results in line with TechnoPhobia's standard fee rates.
- 4.2. Such additional charges referred to in clauses 4.1.2 and 4.1.3 shall be payable by the Client immediately upon delivery of an invoice. In such circumstances TechnoPhobia will use reasonable endeavours to notify the Client of changes to Charges or any variation to this Agreement prior to invoicing.
- 4.3. If the Client wishes to make a Change to a Specification, a person with the Client's Project Authority shall serve a Change Request by email or fax to TechnoPhobia's Project Manager detailing the Change requirements.
- 4.4. Upon receipt of the Change Request TechnoPhobia shall assess the impact of the Change Request and report back to the Client.

- 4.5. If the Client wishes to proceed with the Change, in view of the likely impact, the Client shall request TechnoPhobia to produce an Exception Plan which will detail any additional costs, changes in timescales and changes to existing Project and Product Specifications.
- 4.5.1. A Charge may be made for the Exception Plan.
- 4.6. The Client shall approve the Exception Plan, and provide a Purchase Order for any associated costs and the Exception Plan will be Signed-Off.
- 4.7. A Change required by TechnoPhobia as a consequence of a Change in Law shall be submitted as an Exception Plan direct to the Client as soon as reasonably practicable after TechnoPhobia becomes aware that such a Change is required. If the circumstances mean that at the time TechnoPhobia cannot reasonably serve an Exception Plan before the Change is required TechnoPhobia shall inform the Client as soon as reasonably practicable after the Change has been effected.
- 4.7.1. For the avoidance of doubt TechnoPhobia may proceed with Changes as a consequence of a Change in Law regardless of whether the Client approves the Exception Plan or not.
- 4.8. In circumstances where the Client delays the progress of any aspect of the Change Control Procedure or unreasonably refuses to accept a Change, TechnoPhobia shall not be liable to the Client for the performance or delay of any Work Packages arising as a consequence of a failure to implement those Changes.
- 4.9. Unless TechnoPhobia agrees in writing to proceed with the Changes requested in a Change Request TechnoPhobia excludes liability for not proceeding with such Changes.

## 5. Review and Amendment Procedure

- 5.1. At set stages which will be detailed in the Project Specification, TechnoPhobia shall present the Work Package to the Client for review.
- 5.2. The Client shall review the Work Package and identify any Non-Compliance and where the Client identifies any Non-Compliances a single, full and specific report detailing all Non-Compliances shall be made in writing by the Client to TechnoPhobia within the timescales detailed in the Project Specification.

- 5.3. The Client must provide Scheduled Decisions to TechnoPhobia in writing in line with timescales agreed in the Project Specification.
- 5.4. Subject to section 8 TechnoPhobia shall correct all Non-Compliances identified in the review process in line with the timescales agreed in the Project Specification.
- 5.5. Any other issues identified by the Client in relation to a Work Package that are not covered in clause 5.2 shall be dealt with through the Change Control Procedure in section 4.

## 6. Proprietary Rights in IPR

- 6.1. Unless otherwise expressed in writing to the contrary and subject to clause 6.2, all title in any IPRs relating to the Work Packages (including without limit any Internet Protocol Addresses registered by TechnoPhobia to the Client) are and shall remain the property of TechnoPhobia. TechnoPhobia reserves the right to change the Internet Protocol Address registered to the Client at any time; however, TechnoPhobia shall endeavour to give reasonable notice of the change and shall use reasonable endeavours to reduce disruption to the Client resulting from such changes.
- 6.2. All IPRs in the Site Design and any Client-ware and Client Materials are and shall remain the property of the Client.
- 6.3. The Client shall keep all Hardware hired or supplied under licence by TechnoPhobia free of all charges, liens and encumbrances and protect them from any and all judicial process.
- 6.4. Subject to the Change Control Procedure, and subject to the Client complying with its obligations under this Agreement, TechnoPhobia grants to the Client a non-exclusive, non-transferable, revocable licence to use the Deliverables on the Hardware and/or Client-ware and to interface with any Client Materials for the purposes of operating the Site for the Term and, except as provided for in this Agreement, the Client is not permitted to sub-license any rights granted under this Agreement to any third party.
- 6.5.
  - 6.5.1. The Client agrees that it will not itself, or through a third party:
    - 6.5.1.1. Subject to 6.5.2 and 6.5.3 translate, adapt, vary, modify, reverse engineer, decompile or disassemble any Deliverable or otherwise

attempt to derive source code from the Deliverables without the written consent of a director of TechnoPhobia;

- 6.5.1.2. Sell, lease, license, transfer or sub-licence the Deliverables or associated documentation; or
- 6.5.1.3. Write or develop any derivative or other software programs based, in whole or in part upon the Deliverables or any Confidential Information belonging to TechnoPhobia.
- 6.5.2. In the case of reverse analysis where permitted by applicable law the Client may, subject to serving prior written notice upon TechnoPhobia;
  - 6.5.2.1. Incidentally decompile any Deliverable (excluding all Third Party Software unless permitted by such Third Party Agreement) only if it is essential to do so in order to achieve interoperability of the Deliverable with another software program or hardware for the purpose of the Site as set out in the Project Specification (the 'Permitted Purpose');
  - 6.5.2.2. Make back up copies of the Software in a Deliverable if necessary for the Permitted Purpose;

...provided the information obtained by the Client during such processes referred to in clauses 6.5.2.1 and 6.5.2.2 is only used for the Permitted Purpose and is not disclosed to a third party (and if any third party is used for such processing the Client shall procure that such third party agrees to be bound by the confidentiality clauses set out in this Agreement prior to carrying out such work and notify TechnoPhobia of that third party's name and address) and is not used to create any Software or services which would operate in a substantially similar way or expression as the Deliverables, nor used in any manner which would breach the provisions of this Agreement;
- 6.5.3. Notwithstanding clause 6.5.2, the Client undertakes to first consult with TechnoPhobia regarding any data or IPR the Client requires in order to achieve interoperability or to deduce underlying principles or make back up copies so that TechnoPhobia may consider either:
  - 6.5.3.1. Making the same available to the Client within a reasonable period (without the Client having to rely on clause 6.5.2) subject to the restrictions on disclosure set out in clause 6.5.2; or

- 6.5.3.2. TechnoPhobia agreeing to carry out such work at a reasonable commercial fee;
- 6.6. Without prejudice to clauses 6.10 and 6.11, TechnoPhobia shall have the exclusive right to defend and negotiate the settlement of any claim brought against the Client alleging that any Work Package infringes an IPR of a third party (the 'Claim'). TechnoPhobia shall pay all costs and damages awarded against or agreed to by TechnoPhobia in settlement of the Claim, provided that the Client furnishes TechnoPhobia with prompt written notice of the Claim and provides TechnoPhobia with reasonable assistance and sole and exclusive authority to defend or settle the Claim.
- 6.7. If in TechnoPhobia's reasonable opinion, any Work Package is or may become the subject of any IPR claim then TechnoPhobia shall either:
- 6.7.1. Obtain for the Client the right to continue using the relevant Work Package; or
- 6.7.2. Replace or modify the relevant Work Package so they become non-infringing.
- 6.8. If the remedies set out in clause 6.7 are not in TechnoPhobia's opinion reasonably available, then the Client shall return the relevant Work Package to TechnoPhobia and TechnoPhobia shall refund to the Client the corresponding portion of the Charges associated with such infringing Work Package.
- 6.9. If in the circumstances set out in clause 6.8 the parties agree, both acting in good faith, that the Agreement should be terminated then subject to clauses 6.10 and 6.11 neither party shall be liable to the other except for any liabilities or Charges already incurred and due up to the agreed termination.
- 6.10. TechnoPhobia shall have no liability to the Client and any remedies set out in this Agreement shall not be available to the Client if the Client:
- 6.10.1. Supplies Client Materials which infringe third party IPR rights;
- 6.10.2. Is in breach of any provision of this Agreement in particular in connection with TechnoPhobia's IPR ownership;
- 6.10.3. Uses any Work Packages in combination with any Client Materials, Client-ware or Third Party Software or services in breach of this Agreement (including but not limited to instructions set out with any Work Packages or Dependencies) or otherwise contrary to any prevailing law, regulation or

recognised advertising or internet codes of practice or computer industry standard.

- 6.11. The Client accepts sole responsibility for any third party IPR infringement claim referred to in clause 6.10 and agrees to indemnify TechnoPhobia against all liabilities, losses or expenses which TechnoPhobia may incur as a result of work done in accordance with the Client's Specification or use of the Client Material or otherwise suffered by TechnoPhobia (including legal costs) in relation to any such claim, or breach by the Client.

## 7. Invoicing and Payment.

- 7.1. All invoices are due for settlement within 30 days from the date of the invoice.
- 7.2. Unless otherwise expressly stated in writing, where the Project Specification details that the Project will be invoiced in phases, TechnoPhobia will invoice the first phase on receipt of the Client's Purchase Order.
- 7.3. All work must be authorised by a Client's Purchase Order, or by a signed Client Purchase Order issued by TechnoPhobia. No work can commence until a Purchase Order has been received.
- 7.4. Invoices for payment in accordance with the Payment Schedule will be raised at the point that a Work Package receives an Acceptance Certificate or at the Deemed Acceptance Date. Invoices for Deliverables and/or Services which are not subject to a specific Acceptance regime and/or Project Specification and have been supplied on a one-off basis shall be raised when TechnoPhobia advises the Client the work has been completed or on an interim basis at TechnoPhobia's discretion.
- 7.5. In circumstances where the Client has previously failed or persistently fails to make payment within 30 days of an invoice TechnoPhobia reserves the right to change the payment terms detailed in 7.1 at its discretion.
- 7.6. If the Client fails to pay any amount payable by it under this Agreement, TechnoPhobia shall be entitled to charge the Client interest on the overdue amount, payable by the Client forthwith on demand, from the due date up to the Client date of actual payment, after as well as before judgment, at the rate of 3% per annum above the current base rate at the time of The Cooperative Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly.

## **8. Warranty and Exclusion of Liability**

- 8.1. TechnoPhobia shall use reasonable skill and care in the delivery of its Work Packages and excludes liability where:
- 8.1.1. All Client-ware is not configured as set out in the Dependencies; and/or
  - 8.1.2. The Client does not meet the conditions set out in section 9 or otherwise meet the Dependencies; and/or
  - 8.1.3. TechnoPhobia is in breach and the Client does not grant TechnoPhobia reasonable access for program or system testing and repair; and/or
  - 8.1.4. Failure to perform is caused by the Client, Client Materials or Client-ware or by a Non-TechnoPhobia Defect; and/or
  - 8.1.5. The Client uses any Work Packages in combination with any Client Materials, Client-ware or Third Party Software or services in breach of this Agreement (including but not limited to instructions set out with any Work Packages or Dependencies) or otherwise contrary to any prevailing law, regulation or recognised advertising or internet codes of practice or computer industry standard; and/or
  - 8.1.6. Such liability is as a consequence of any Known Risks or is attributable to circumstances within the acceptance level of error as referred to in clause 8.2.2.
- 8.2. While every reasonable effort will be made to ensure that materials used are of satisfactory quality to meet the Specification:
- 8.2.1. TechnoPhobia cannot be held responsible for the breakdown of these materials following processing, and the Client acknowledges that Software in general is not error-free; and
  - 8.2.2. The Client agrees that an acceptable level of error must be agreed and recorded in the Client Acceptance Criteria; and
  - 8.2.3. Third Party Software and any Third Party Services used shall be supplied in accordance with the relevant Third Party Agreements, copies of which should be read and understood by the Client before entering into this Agreement, and the Client accepts that TechnoPhobia shall not be liable for any loss suffered by the Client as a consequence of a breach by such Third Party which causes TechnoPhobia to be in breach of its obligations to the Client.

- 8.3. TechnoPhobia will use commercially reasonable efforts to check for the most commonly known viruses before delivering any Work Packages but the Client is solely responsible for virus scanning any Work Packages, and TechnoPhobia excludes liability for any viruses affecting the Client's use of a Work Package or that affects any Client-ware or Client Materials.
- 8.4. Subject to clauses 8.1, 8.2, 8.3, 8.5, 8.6, 8.7 and section 12, the maximum TechnoPhobia shall be liable to the Client under this Agreement is 100% of the maximum amount that was paid for the relevant Work Package affected by TechnoPhobia's breach which gave rise to the liability and the Client acknowledges and agrees the allocation of risk in these Conditions is:
- 8.4.1. Reflected in the prices or charges agreed between the parties;
- 8.4.2. A recognition that any Work Packages supplied cannot be tested in every possible combination and it is not within TechnoPhobia's control how and for what purpose the Work Packages may be used by the Client; and
- 8.4.3. Reasonable in the circumstances bearing in mind the ability and reasonable costs of TechnoPhobia to insure against such risks in the market.
- 8.5. Even if advised of the possibility, TechnoPhobia excludes all liability for:
- 8.5.1. Any indirect or consequential loss, damage, cost or expense of any kind whatever and howsoever caused, whether arising under contract, tort (including negligence) or otherwise;
- 8.5.2. (Without limitation) loss of revenue, loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings or damage to software;
- 8.5.3. Any liquidated damages, fines, penalties or punitive or exemplary or aggravated damages; and
- 8.5.4. Statements (in writing or otherwise) made by TechnoPhobia's employees or contained in any sales literature. The Client's attention is drawn to section 16.
- 8.6. TechnoPhobia shall be entitled, at its sole discretion, to replace, repair or remedy any defects other than Non-TechnoPhobia defects free of charge but if a replacement, repair or remedy is not possible TechnoPhobia's liability is limited to that set out in clauses 8.4 and TechnoPhobia shall have no further liability to the Client.

- 8.7. Nothing in this Agreement shall limit TechnoPhobia's liability for:
- 8.7.1. Personal injury or death caused by the negligence of TechnoPhobia and its employees;
  - 8.7.2. Any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
  - 8.7.3. Fraud; or
  - 8.7.4. Any other liability which cannot be excluded or limited under applicable law.
- 8.8. This Agreement sets out the full extent of TechnoPhobia's obligations and liabilities in respect of the supply of the Work Packages.
- 8.9. All conditions, warranties or other terms concerning the Work Packages which might otherwise be implied into this Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded to the extent permitted by law.

## **9. Client Responsibilities and Content**

- 9.1. The Client acknowledges that TechnoPhobia shall not be in breach of this Agreement as a consequence of any of the following:
- 9.1.1. Failure by the Client to provide full and timely co-operation (which the Client agrees to provide) as well as satisfying all of the Dependencies;
  - 9.1.2. The accuracy and completeness of any content, information and data the Client has agreed to provide to TechnoPhobia. Accordingly, the Client shall provide TechnoPhobia with access to, and use of, all information, data and documentation reasonably required by TechnoPhobia for the performance by TechnoPhobia of its obligations under this Agreement;
- 9.2. Where TechnoPhobia grants the Client access to the Server in order to update information on the Site or the Client supplies the same to TechnoPhobia to upload the Client shall ensure that any Client Materials or information supplied or approved by the Client are accurate in every respect and do not contain anything which constitutes a violation or infringement of the rights and/or IPR of

any person, firm or company (including but not limited to material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party IPR or rights of confidentiality), or which is illegal or which constitutes a breach of any relevant regulations or codes of practice ('Inappropriate Content').

- 9.3. The Client shall indemnify and keep indemnified TechnoPhobia against all loss, fines imposed, damages and expenses awarded by a court or regulator of competent jurisdiction resulting from all claims, demands, actions, causes of action and judgments arising out of or attributable to any breach by the Client of its obligations under clause 9.2 or the necessary use by TechnoPhobia of any Inappropriate Content in carrying out its obligations in each Work Package.
- 9.4. TechnoPhobia shall not be obliged to include any Client Material and shall remove Client Material or terminate any Work Package where such Client Material is likely in the reasonable opinion of TechnoPhobia to be in breach of the provisions of this Agreement and TechnoPhobia shall not be liable to the Client for exercising its discretion to remove such Client Material or refuse to proceed with any Work Package.
- 9.5. TechnoPhobia reserves the right to move or reconfigure any Work Package for reasons of health, safety, security or any breach by the Client of this Agreement. Notice shall be given where reasonably possible. TechnoPhobia may impose additional charges for any work carried out under this clause.
- 9.6. The Client is responsible for providing TechnoPhobia with details of all systems and services that are to be allowed through any firewall provided by TechnoPhobia as part of the Work Package.
- 9.7. Subject to the Specification TechnoPhobia shall at the request of the Client update the Site with content from time to time.
- 9.8. The Client accepts that TechnoPhobia has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. TechnoPhobia reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content or is in breach of any Third Party Agreement. TechnoPhobia shall use reasonable endeavours to notify the Client if it becomes aware of any allegation that content on the Site may be Inappropriate Content.
- 9.9. Third Party Software and any Third Party Services used shall be supplied in accordance with the relevant Third Party Agreements, copies of which should be read and understood by the Client before entering into this Agreement, and

the Client accepts that TechnoPhobia shall not be liable for any loss suffered by the Client as a consequence of a breach by such third party which causes TechnoPhobia to be in breach of its obligations to the Client.

- 9.10. The Client agrees to enter into good faith negotiations with the intent of agreeing a maintenance agreement to govern the provision by TechnoPhobia of ongoing maintenance to the Software.

## 10. Production and Delivery

- 10.1. While every effort will be made to adhere to the production and delivery times quoted, no liability will be accepted by TechnoPhobia for any late delivery resulting from late or incorrect supply of Client Material, Change Requests, Non-TechnoPhobia Defects or Client resources or late Acceptance or Scheduled Decisions or any other breach of these Conditions by the Client.
- 10.2. Where such delays occur and the Client requires TechnoPhobia to meet a particular Milestone the Client will be liable to pay Rush Charges proportional to the additional or overtime work that results. TechnoPhobia shall use reasonable endeavours to inform the Client what the Rush Charges will be prior to commencing such work but the Client shall be liable for such costs in the absence of such notification. Rush Charges will be detailed on the final invoice.
- 10.3. All Changes must be communicated through the Change Control Procedure.
- 10.4. Except where time of the essence is expressly stated to operate, time shall not be of the essence in this Agreement as regards any time, date or period mentioned in this Agreement or subsequently substituted as a time, date or period by agreement in writing between the parties.
- 10.5. Hard copy delivery by TechnoPhobia's staff is at TechnoPhobia's discretion and will be charged at £0.50 per mile. Postage and packing will be charged at cost (dependent on postal rates and weight) and required delivery weight and method. Delivery time is in addition to the minimum production times quoted.

## 11. Acceptance Procedure

- 11.1. In the absence of the Client and TechnoPhobia agreeing a revised User Acceptance Testing Window the Client must proceed with TechnoPhobia's standard User Acceptance Testing Window as part of the Project Specification. If the Client does not conduct User Acceptance Tests during the period stated for the User Acceptance Testing Window, or during any subsequent

recommencement of the User Acceptance Testing Window, the Work Package will be removed from the Test Environment and invoiced in accordance with the Payment Schedule on the relevant date (the Deemed Acceptance Date) when acceptance would have been completed. Returning the Work Package to the Testing Environment and any Changes following subsequent testing may be subject to additional Charges.

- 11.2. TechnoPhobia shall use its reasonable endeavours to ensure that any Work Package is ready for User Acceptance Testing in accordance with the timescales required by the agreed User Acceptance Testing Window.
- 11.3. In the absence of agreement TechnoPhobia may give to the Client 5 Business Days prior notice in writing of the date when the User Acceptance Testing Window will commence. Unless otherwise agreed, the User Acceptance Testing Window shall commence at 9am on the sixth Business Day after such notice has been given.
- 11.4. Subject to clause 11.6 if the relevant Work Package (or phase thereof) fails to meet the Client Acceptance Criteria as detailed in the Project Specification due to a Non-Compliance, all Non-Compliances must be detailed in a single, full and specific written report to TechnoPhobia before the expiry of the User Acceptance Testing Window. TechnoPhobia will effect all required amendments and if necessary, recommence the User Acceptance Testing Window.
- 11.5. The process set out in clause 11.4 will be repeated until the earlier of the following occurs;
  - 11.5.1. The relevant Work Package (or phase thereof) meets the Client Acceptance Criteria; or
  - 11.5.2. The User Acceptance Testing Window has been recommenced twice;
- 11.6. If any failure to meet the Client Acceptance Criteria results from a Non-TechnoPhobia Defect the Work Package shall be deemed to have met the Client Acceptance Criteria and such date shall be the Deemed Acceptance Date notwithstanding such Non-TechnoPhobia Defect. Upon TechnoPhobia notifying the Client of the Deemed Acceptance Date the Client is liable for the Charges and TechnoPhobia will invoice the Client for the Charges as detailed in the Project Specification. TechnoPhobia shall provide assistance reasonably requested by the Client in remedying all Non-TechnoPhobia Defects by supplying additional services or products. If so requested, the Client shall pay TechnoPhobia in full for all such additional services and products at the current TechnoPhobia Fee Rates.

- 11.7. If the relevant Work Package (or phase thereof) fails to meet the Client Acceptance Criteria on or after the occurrence of the events specified in clauses 11.4 or 11.5 (and such failure is not directly attributable to a failure as a consequence of the circumstances referred to in clause 11.6), then the Client may, by written notice to TechnoPhobia, terminate this Agreement and, upon any such termination, the Client will promptly return to TechnoPhobia all Deliverables and other equipment or Confidential Information belonging to TechnoPhobia.
- 11.8. Once the Work Package has met the Client Acceptance Criteria, the Client is obliged to provide TechnoPhobia with an Acceptance Certificate. Once an Acceptance Certificate has been received TechnoPhobia will transfer the Work Package and required configuration to the Live Environment and the Client will then conduct and confirm Live Sign-Off.
- 11.9. In the event that Live Sign-Off cannot be granted, one of the following will apply;
- 11.9.1. If the Work Package has not been correctly transferred to the Live Environment, TechnoPhobia will immediately effect remedial action.
- 11.9.2. If the Work Package fails to function in the Live Environment as it did the Test Environment, TechnoPhobia will either;
- 11.9.2.1. Rectify any differences in configuration between the Live and Test Environments; or
- 11.9.2.2. Roll back the Live Environment to a previous stable state and investigate the cause of the failure.
- In circumstances where the Client is in breach of these Conditions the Client will be liable for Charges for work resulting from 11.9.2.1 and 11.9.2.2 at TechnoPhobia Fee Rates.
- 11.9.3. If the Work Package fails to function in the Live Environment due to an error which was pre-existing in the Test Environment but the Acceptance Certificate has been provided; the Client will be liable for any additional costs charged at TechnoPhobia Fee Rates incurred as a result.
- 11.10. Where none of the circumstances detailed in 11.9 apply, if the Client does not provide Live Sign-Off within 7 days of the Work Package being uploaded to the Live Environment, Live Sign-Off will be deemed to have been granted by default and the deemed Live Sign-Off Date shall be noon on the next Business Day

following the seventh day after the applicable Work Package has been uploaded in accordance with this Condition.

## 12. Materials

- 12.1. Whilst every care is taken in handling Client Materials, TechnoPhobia accepts the Client Materials for processing on the understanding that TechnoPhobia's liability (if proven) for the Client Materials which are lost, stolen, damaged or destroyed whether as a result of the negligence of TechnoPhobia, its servants, agents or sub-contractors is limited to replacement cost of the Client Materials unless a Director of TechnoPhobia at the time of order agrees in writing to accept a higher liability.

## 13. Insurance

- 13.1. TechnoPhobia advises the Client to insure Client Materials for their full value against all risks, loss or damage.
- 13.2. Subject to section 12, the responsibility for any loss or damage howsoever caused to equipment loaned or hired to the Client by TechnoPhobia rests with the Client. The Client is advised to ensure that it has adequate insurance cover in place.

## 14. Term, Duration of Services and Termination

- 14.1. This Agreement shall commence from the Effective Date and shall continue in accordance with this section 14.
- 14.2. Either party may voluntarily terminate this Agreement at any time on giving three months notice to the other party.
- 14.3. In the event of voluntary termination (under clause 14.2) by the Client part way through the Delivery of a Work Package, the Client remains obliged to reimburse TechnoPhobia's Up-Front Costs and pay the Charges up to the date of such termination.
- 14.4. Upon termination of any Project or Work Package referred to in this Agreement all licences granted by TechnoPhobia or any third party under this Agreement in

respect of such Project or Work Package shall terminate immediately. In the event that notice of a termination is given, the parties agree to negotiate in good faith with a view to agreeing extended licences for use by the Client.

- 14.5. Upon termination TechnoPhobia reserves the right to remove the Client's data from its Hardware, TechnoPhobia Data Centre or Third Party Data Centre after 5 Business Days or sooner at TechnoPhobia's reasonable discretion.
- 14.6. Where a disconnection of a Work Package has occurred solely as a result of actions of the Client under clause 14.7 below, a reinstatement fee will apply to reactivate the Work Package, in addition to immediate payment in full of any outstanding Charges. Reactivation of the Services will only be performed during Working Hours.
- 14.7. In addition to termination permitted elsewhere in this Agreement, this Agreement may also be terminated:
  - 14.7.1. Immediately by TechnoPhobia if the Client fails to pay any undisputed sums due under this Agreement within 14 days of their due date;
  - 14.7.2. Immediately by either party if the other commits any material breach of this Agreement and (in the case of a breach capable of being remedied) does not remedy the breach within a reasonable time period as may be determined by the first party and specified in a formal request in writing or by email;
  - 14.7.3. Immediately by written notice from TechnoPhobia if the Client commits any material breach of this Agreement which may impact on Hardware or the ability of TechnoPhobia to provide the Services to the Client.
  - 14.7.4. Immediately by either party if:
    - 14.7.4.1. The other party ceases to trade (either in whole, or any part or division involved in the performance of this Agreement); or
    - 14.7.4.2. The other party becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
    - 14.7.4.3. 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 the other 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

- 14.7.4.4. The ability of the other 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
- 14.7.4.5. Any process is instituted which could lead to the other 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).

## **15. Non-Solicitation and Confidentiality**

- 15.1. Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential including, without limitation, information contained or embodied in any Deliverable, the Specification and other information supplied by either party to the other (the 'Confidential Information') and the parties agree to treat all Confidential Information with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with reasonable current commercial security practices, provided that this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).
- 15.2. Neither party shall without the prior written consent of the other party divulge any part of the other party's Confidential Information to any person except:
  - 15.2.1. To their own employees and then only to those employees who need to know the same for the purposes of this Agreement;
  - 15.2.2. To either party's auditors, an officer of Inland Revenue, an officer of HM Customs and Excise, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right or duty or obligation to know the business of the other party and then only in pursuance of such right or duty or obligation;
  - 15.2.3. Any person who is for the time being appointed by either party for the purpose of ensuring the continued delivery of the relevant Work Package and then only in accordance with any relevant licence provisions referred to in this Agreement.

- 15.3. Both parties undertake to ensure that persons and bodies referred to in clause 15.2 are made aware before the disclosure of any part of such Confidential Information that the same is confidential and that they owe a duty of confidence to the other party.
- 15.4. Each party shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 15.5. The provisions of this clause shall survive the termination of any Work Package but the restrictions contained in clause 15.1 shall cease to apply to any information which may come into the public domain otherwise than through unauthorised disclosure.
- 15.6. Unless expressly stated to the contrary, nothing in this section 15 shall prevent TechnoPhobia from exploiting any IPR that it develops during the course of any Work Package.
- 15.7. During this Agreement and for a period of one year from termination or expiry the Client shall not solicit the services of nor offer employment to any member of staff of TechnoPhobia (and shall procure the same undertaking from any of its servants, agents and/or sub-contractors) without the prior written consent of a TechnoPhobia director.
- 15.8. If the client does recruit in breach of clause 15.7 it shall pay to TechnoPhobia a sum equal to 6 months of the individual's annual salary in recognition of the value of the staff and costs of replacement to TechnoPhobia and inconvenience caused.

## 16. Entire Agreement

- 16.1. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of any Project, Work Package or any other work carried out by TechnoPhobia for the Client. No variations of or additions to the same shall be of any legal effect and no employee or agent of TechnoPhobia is authorised to make any representation binding upon TechnoPhobia unless such variation or addition is made in writing and signed by TechnoPhobia's Authorised Representative in accordance with the Change Control Procedure. However the obligations of the parties under any pre-existing

non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between such agreement and this agreement.

- 16.2. This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing in accordance with the Change Control Procedure signed by a duly authorised representative of each of the parties.

## 17. Force Majeure

- 17.1. TechnoPhobia shall not be liable for any failure to perform any Work Package due or principally due to any circumstances beyond its control including but not limited to anything arising directly or indirectly from:

17.1.1. Scarcity of fuel, power or components; failure of the Client-ware; breakdowns in machinery;

17.1.2. Fire, storm, flood, Act of God, war, hostilities (whether war be declared or not) civil war and disturbance, rebellion, revolution, insurrection, military or usurped power, confiscation, nationalisation or requisition or destruction of , or damage to, property by or under the order of any government or public or local authority, strikes, lock-outs and industrial action in whatever forms; and

17.1.3. Radiation alleged to have emanated from any computer equipment (including video display units) or any other radiation, toxic, explosive or other hazardous waste;

- 17.2. If such delay continues for more than one month the parties shall take all reasonable steps to investigate the effect of the Force Majeure event and revise the affected Work Packages accordingly. In the event that no such revisions are agreed either party may give notice to terminate this Agreement with immediate effect.

## 18. Data Protection and Freedom of Information

- 18.1. The parties undertake to comply with the provisions of the Data Protection Act 1998 (DPA) and Freedom of Information Act 2000 (FOIA) and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

- 18.2. The Client shall inform TechnoPhobia immediately upon receiving any DPA or FOIA Notice regarding a Work Package, Service or information relating to TechnoPhobia and shall not divulge such information unless TechnoPhobia consents, provided that such consent shall not be unreasonably withheld or delayed.

## 19. Agency, partnership

- 19.1. This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

## 20. Announcements

- 20.1. No party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the other party.

## 21. Assignment

- 21.1. This Agreement is personal to the parties and this Agreement or any rights, licences or obligations under it may not be assigned, licensed, sub-contracted or otherwise transferred by either party without the prior written approval of a director of the other party.
- 21.2. In circumstances where the Client seeks approval under clause 21.1 it shall be reasonable for TechnoPhobia to refuse consent in circumstances where the assignee or acquirer or sub-contractor is a Competitor of TechnoPhobia. If in TechnoPhobia's opinion this is likely, then the parties shall act in good faith to resolve the issue prior to such transfer.

## 22. Notices

- 22.1. All notices under this Agreement shall be in writing.
- 22.2. Notices shall be deemed to have been duly given:
- 22.2.1. When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

- 22.2.2. When sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- 22.2.3. On the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 22.2.4. On the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party.

## **23. Specifications**

- 23.1. For the purpose of section 16, the provisions set out in the Specifications shall form part of this Agreement.

## **24. Severance**

- 24.1. If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **25. Waiver**

- 25.1. No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

## **26. Sub-Contracting**

- 26.1. TechnoPhobia may perform any or all of its obligations under this Agreement through agents or sub-contractors.

## 27. Costs and Expenses

- 27.1. Each party shall bear its own legal costs and other costs and expenses arising in connection with the drafting, negotiation, execution and registration (if applicable) of this Agreement.

## 28. Set-Off

- 28.1. The Client shall not set off the amount of any liability of TechnoPhobia against any sum due to TechnoPhobia under this Agreement.

## 29. Third Parties

- 29.1. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from under such Act.

### 30. Governing Law and General

30.1. This Agreement and any questions, disputes or other matters relating to it or to any contract made subject to it shall be governed by and determined in accordance with the Laws of England and the English courts shall have exclusive jurisdiction.

### 31. Signature Clause

31.1. This Signature clause shall be used where TechnoPhobia requires the Client to sign this hard copy prior to commencing the Project or any Work Package. In the absence of a signed document the Client accepts that these Conditions will apply to any work or services commenced by TechnoPhobia whenever the related Work Package is commenced. In such circumstances the version of the Conditions that will govern the contract will be that set out on TechnoPhobia's website as on the date on which the Work Package commenced.

Signed by: [ ]

For and on behalf  
of

TechnoPhobia .....

Date .....

Signed by: [ ]

For and on behalf  
of

[Client] .....

Date .....

## Document History

This section of the document ensures our document control procedures comply with ISO9001:2000 standards.

Version	Change Description	Author / date	Reviewed by /date	Approved by /date
1.0	First Release	Helen Robinson, Duncan Randall, Peter Rawlinson 1/07/06	Chris Dymond 27/07/06	Helen Robinson 27/07/06
1.1	Small change to body text on Page 10 'Rush Charges'	Andrew Heawood 16/02/07	Helen Wallis 16/02/07	Helen Wallis 16/02/07
1.2	Replaced previous 'Review Status' section with this 'Document History' section	Andrew Heawood 16/02/07	Helen Wallis 16/02/07	Helen Wallis 16/02/07
1.3	Final review.	Duncan Randall	Duncan Randall	Duncan Randall 7/4/7