



Portsea Software Ltd, Terms of Business

Date: 21st August 2020

The following terms of business apply to all engagements accepted by Portsea Software Limited. All work is carried out under these terms except where changes are expressly agreed in writing.

These terms may be updated from time to time for regulatory, legal or technical reasons. We reserve the right to do this without seeking the consent of our clients. The latest version of these terms and conditions is available on our website at www.portseasoftware.com.

1. APPLICABLE LAW

- 1.1. Our engagement letter, the schedules of services and our standard terms and conditions of business are governed by and should be construed in accordance with English law. Each party agrees that the courts of England will have exclusive jurisdiction in relation to any claim, dispute or difference concerning this engagement letter and any matter arising from it on any basis. Each party irrevocably waives any right to object to any action being brought in those courts, to claim that the action has been brought in an inappropriate forum, or to claim that those courts do not have jurisdiction.
- 1.2. We will not accept responsibility if you act on advice previously given by us without first confirming with us that the advice is still valid in light of any change in the law or in your circumstances. We will accept no liability for losses arising from changes in the law, or the interpretation thereof, that occur after the date on which the advice is given.

2. CONFIDENTIALITY

- 2.1 Unless we are authorised by you to disclose information on your behalf, we confirm that if you give us confidential information we will, at all times during and after this engagement, keep it confidential, except as required by law or as provided for in regulatory, ethical or other professional pronouncements applicable to us or our engagement.
- 2.2 You agree that, if we act for other clients who are or who become your competitors, to comply with our duty of confidentiality it will be sufficient for us to take such steps as we think appropriate to preserve the confidentiality of information given to us by you, both during and after this engagement. These may include taking the same or similar steps as we take in respect of the confidentiality of our own information.
- 2.3 In addition, if we act for other clients whose interests are or may be adverse to yours, we will manage the conflict by implementing additional safeguards to preserve confidentiality. Safeguards may include measures such as separate teams, physical separation of teams, and separate arrangements for storage of, and access to, information.

- 2.4 You agree that the effective implementation of such steps or safeguards as described above will provide adequate measures to avoid any real risk of confidentiality being impaired.
- 2.5 We may, on occasions, subcontract software development or other work on your behalf to other professionals. The subcontractors will be bound by our client confidentiality terms.

3. CONFLICTS OF INTEREST

- 3.1 We will inform you if we become aware of any conflict of interest in our relationship with you or in our relationship with you and another client, unless we are unable to do so because of our confidentiality obligations. [We have safeguards that can be implemented to protect the interests of different clients if a conflict arises.] If conflicts are identified which cannot be managed in a way that protects your interests, we regret that we will be unable to provide further services.
- 3.2 If there is a conflict of interest that is capable of being addressed successfully by the adoption of suitable safeguards to protect your interests, we will adopt those safeguards. During and after our engagement, you agree that we reserve the right to act for other clients whose interests are or may compete with or be adverse to yours, subject, of course, to our obligations of confidentiality and the safeguards set out in the paragraph on confidentiality above.

4. DATA PROTECTION

- 4.1. In this clause [7], the following definitions shall apply: 'client personal data' means any personal data provided to us by you, or on your behalf, for the purpose of providing our services to you, pursuant to our engagement letter with you; 'data protection legislation' means all applicable privacy and data protection legislation and regulations including PECR, the GDPR and any applicable national laws, regulations and secondary legislation in the UK relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time; 'controller', 'data subject', 'personal data', and 'process' shall have the meanings given to them in the data protection legislation; 'GDPR' means the General Data Protection Regulation ((EU) 2016/679); and 'PECR' means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003).
- 4.2. We shall each be considered an independent data controller in relation to the client personal data. Each of us will comply with all requirements and obligations applicable to us under the data protection legislation in respect of the client personal data.
- 4.3. You shall only disclose client personal data to us where: a) you have provided the necessary information to the relevant data subjects regarding its use (and you may use or refer to our privacy policy available at www.portseasoftware.com); b) you have a lawful basis upon which to do so, which, in the absence of any other lawful basis, shall be with

the relevant data subject's consent; and c) you have complied with the necessary requirements under the data protection legislation to enable you to do so.

- 4.4. Should you require any further details regarding our treatment of personal data, please contact M Johnston who is our data protection manager
- 4.5. We shall only process the client personal data: a) in order to provide our services to you and perform any other obligations in accordance with our engagement with you; and b) where it is necessary for the purposes of our legitimate interests and those interests are not overridden by the data subjects' own privacy rights. Our privacy notice (available at www.portseasoftware.com) contains further details as to how we may process client personal data.]
- 4.6. We may disclose the client personal data to other third parties in the context of a possible sale, merger, restructuring or financing of or investment in our business. In this event we will take appropriate measures to ensure that the security of the client personal data continues to be ensured in accordance with data protection legislation. If a change happens to our business, then the new owners may use our client personal data in the same way as set out in these terms
- 4.7. We shall maintain commercially reasonable and appropriate security measures, including administrative, physical and technical safeguards, to protect against unauthorised or unlawful processing of the client personal data and against accidental loss or destruction of, or damage to, the client personal data.
- 4.8. [In respect of the client personal data, provided that we are legally permitted to do so, we shall promptly notify you in the event that:(a) we receive a request, complaint or any adverse correspondence from or on behalf of a relevant data subject, to exercise their data subject rights under the data protection legislation or in respect of our processing of their personal data;(b) we are served with an information, enforcement or assessment notice (or any similar notices), or receive any other material communication in respect of our processing of the client personal data from a supervisory authority as defined in the data protection legislation (for example in the UK, the Information Commissioner's Officer); or(c) we reasonably believe that there has been any incident which resulted in the accidental or unauthorised access to, or destruction, loss, unauthorised disclosure or alteration of, the client personal data.
- 4.9. Upon the reasonable request of the other, we shall each co-operate with the other and take such reasonable commercial steps or provide such information as is necessary to enable each of us to comply with the data protection legislation in respect of the services provided to you in accordance with our engagement letter with you in relation to those services.

5. DISENGAGEMENT

- 5.1. If we resign or are asked to resign, we will normally issue a disengagement letter to ensure that our respective responsibilities are clear. If we have no contact with you for a period of eighteen months or more, we may issue to your last known address a disengagement letter and thereafter cease to act.

6. ELECTRONIC AND OTHER COMMUNICATION

- 6.1 Unless you instruct us otherwise, we may, if appropriate, communicate with you and with third parties by email or other electronic means. The recipient is responsible for virus checking emails and any attachments.
- 6.2 With electronic communication, there is a risk of non-receipt, delayed receipt, inadvertent misdirection or interception by third parties. We use virus-scanning software to reduce the risk of viruses and similar damaging items being transmitted in emails or by electronic storage devices. Nevertheless, electronic communication is not totally secure and we cannot be held responsible for damage or loss caused by viruses or for communications which are corrupted or altered after despatch. Nor can we accept any liability for problems or accidental errors relating to this means of communication, especially in relation to commercially sensitive material. These are risks you must bear in return for greater efficiency and lower costs. If you do not wish to accept these risks, please let us know and we will communicate by paper mail, other than when electronic submission is mandatory.
- 6.3 Any communication by us with you sent through the postal [or DX] system is deemed to arrive at your postal address two working days after the day the document was sent.

7. FEES AND PAYMENT TERMS

- 7.1 Our fees may depend, not only upon the time spent on, but also on the level of skill and responsibility and the importance and value of the work we provide, as well as the level of risk.
- 7.2 If we provide you with an estimate of our fees for any specific work, the estimate will not be contractually binding unless we explicitly state that will be the case. Otherwise, our fees will be calculated on the basis of the hours worked by each member of staff necessarily engaged on your affairs, multiplied by their charge-out rate per hour, VAT being charged thereon.

Indicative hourly charge-out rates are as follows:

- Software Developer £60 per hour

- 7.3 If requested, we may indicate a fixed fee for the provision of specific services or an indicative range of fees for a particular assignment. It is not our practice to identify fixed fees for more than a year ahead as such fee quotes need to be reviewed in the light of events. If it becomes apparent to us, due to unforeseen circumstances, that a fee quote is inadequate, we reserve the right to notify you of a revised figure or range and to seek your agreement thereto.
- 7.4 We will bill at suitable intervals and our invoices will be due for payment [upon presentation within 14 days of issue. Our fees are exclusive of VAT which will be added where it is chargeable. Any disbursements we incur on your behalf, and expenses

incurred in the course of carrying out our work for you, will be added to our invoices where appropriate.

- 7.5 Unless otherwise agreed to the contrary, our fees do not include the costs of any third party, counsel or other professional fees. If these costs are incurred to fulfil our engagement, such necessary additional charges may be payable by you.
- 7.6 We reserve the right to charge interest on late paid invoices at the rate of [8%] above bank base rates under the Late Payment of Commercial Debts (Interest) Act 1998. We also reserve the right to suspend our services or to cease to act for you, having given written notice, if payment of any fees is unduly delayed. We intend to exercise these rights only if it is fair and reasonable to do so.
- 7.7 If you do not accept that an invoiced fee is fair and reasonable, you must notify us within 14 days of receipt, failing which, you will be deemed to have accepted that payment is due.

8. HELP US TO GIVE YOU THE BEST SERVICE

- 8.1 We are committed to providing you with a high quality service that is both efficient and effective. If, at any point you would like to discuss with us how our service to you could be improved, or if you are dissatisfied with the service you are receiving, please let us know by contacting M Johnston in writing.
- 8.2 We will consider carefully any complaint you may make about our service as soon as we receive it and do all we can to explain the position to you. We will acknowledge your letter within five business days of its receipt and endeavour to deal with your complaint within eight weeks.

9. INTELLECTUAL PROPERTY RIGHTS AND USE OF OUR NAME

- 9.1 We will retain all intellectual property rights in any source code or documents created by us during the course of carrying out the engagement, except where the law specifically states otherwise.
- 9.2 You are not permitted to use our name in any statement or document you may issue unless our prior written consent has been obtained. The only exception to this restriction would be statements or documents that, in accordance with applicable law, are to be made public.

10. INTERPRETATION

- 10.1 If any provision of our engagement letter or terms of business is held to be void, that provision will be deemed not to form part of this contract. In the event of any conflict

between these terms of business and the engagement letter or appendices, the relevant provision in the engagement letter or schedules will take precedence.

11. LIMITATION OF THIRD PARTY RIGHTS

- 11.1 The advice and information we provide to you as part of our service is for your sole use, and not for any third party to whom you may communicate it, unless we have expressly agreed in the engagement letter that a specified third party may rely on our work. We accept no responsibility to third parties, including any group company to whom the engagement letter is not addressed, for any advice, information or material produced as part of our work for you which you make available to them. A party to this agreement is the only person who has the right to enforce any of its terms, and no rights or benefits are conferred on any third party under the Contracts (Rights of Third Parties) Act 1999.

12. PERIOD OF ENGAGEMENT AND TERMINATION

- 12.1 Unless otherwise agreed in our engagement letter, our work will begin when we receive implicit or explicit acceptance of that letter. Except as stated in that letter, we will not be responsible for periods before that date.
- 12.2 Each of us may terminate our agreement by giving not less than 30 days' notice in writing to the other party except if you fail to cooperate with us or we have reason to believe that you have provided us with misleading information, in which case we may terminate this agreement immediately. Termination will be without prejudice to any rights that may have accrued to either of us before termination.
- 12.3 We reserve the right to terminate the engagement between us with immediate effect in the event of: your insolvency, bankruptcy or other arrangement being reached with creditors; an independence issue or change in the law which means we can no longer act; failure to pay our fees by the due dates; or either party being in breach of their obligations if this is not corrected within 30 days of being asked to do so.
- 12.4 In the event of termination of our contract, we will endeavour to agree with you the arrangements for the completion of work in progress at that time, unless we are required for legal or regulatory reasons to cease work immediately. In that event, we will not be required to carry out further work and shall not be responsible or liable for any consequences arising from termination.

13. RELIANCE ON ADVICE

- 13.1 We will endeavour to record all advice on important matters in writing. Advice given orally is not intended to be relied upon unless confirmed in writing. Therefore, if we provide oral advice (for example, during the course of a meeting or a telephone conversation) and you wish to be able to rely on that advice, you must ask for the advice to be confirmed by us in writing.