



TERMS AND CONDITIONS

1. INTERPRETATION

1.1. The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

Acceptance: the acceptance or deemed acceptance of the Project by the Customer pursuant to clause 4.

Agreement: the agreement between Newicon Ltd (**Newicon**) and the Customer for the Project, incorporating these Conditions.

Charges: the charges in respect of the Services as agreed by the parties.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is identified as confidential at the time of disclosure or ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Effective Date: the date of the Agreement specified therein.

Force Majeure Event: any event arising which is beyond the reasonable control of the affected party, including but not limited to any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Materials: the content provided to Newicon by the Customer for incorporation in the Project.

Phase: in relation to the Project Plan, one of the key phases of work identified in the Project Plan.

Sprint: a sprint is a term used to describe one iteration of a project. A sprint will have a set timebox and achievable delivery goal defined.

Timebox: an iteration of the development cycle with a fixed duration defined in Working Days

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Project: the provision by Newicon of the Services as

set out in the Agreement as deliverables.

Project Plan: the plan of the Project agreed by the parties containing amongst other things dates, phases, deliverables, fees and invoicing milestones, as may be amended by written agreement of the parties from time to time. This is also known as the project contract.

Services: the architecture, website, software application, and / or website design and development services to be provided by Newicon.

Project Brief: a brief description of the main goals of the project.

Project Specification: the agreed specification for the Project, as may be amended by written agreement of the parties from time to time. This may also be referred to as the project architecture.

Project Architecture: Architecture represents designs, prototypes and documentation that ultimately creates the project specification.

Sprint Plan: an agreed area of focus for the sprint.

Visitor: a visitor to the Project.

Background Technology: means all Inventions developed by Newicon other than in the course of providing Newicon Services to Client under the Service Contract and all Inventions that Newicon incorporates into Work Product.

(Client or Customer) Materials means requests, intellectual property, and any other information or materials that Client provides to Newicon for Newicon to perform its Services.

Invention means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property Rights therein.

Support agreement typically a separate document indicating the number of hours, response times and support activities to be completed. At minimum this will be an invoice detailing the hours to be provisioned.

1.2. Clause headings do not affect the interpretation of these Conditions.

1.3. References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a project for access by a Visitor to that project.

1.4. **Writing** or **written** includes fax and email.

2. SCOPE OF THE PROJECT

Newicon shall design, develop and deliver the Project in accordance with the Project Architecture, Brief or sprint plan.

3. CUSTOMER RESPONSIBILITIES

- 3.1. The Customer acknowledges that Newicon's ability to provide the Services is dependent upon the full and timely cooperation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer provides to Newicon.

Accordingly, the Customer shall provide Newicon with access to, and use of, all information, data and documentation reasonably required by Newicon for the performance by Newicon of its obligations under the Agreement.

- 3.2. The Customer shall be responsible for the accuracy and completeness of the Materials on the Project.

4. OFFER AND ACCEPTANCE OF PROJECT

- 4.1. Once Newicon has completed the design and development of the Project in accordance with the Project Plan, Newicon shall deliver the Project to the Customer.
- 4.2. On receipt of the Project, the Customer shall test compliance of the Project with the Project Specification. Acceptance of the Project shall be deemed to have taken place upon the occurrence of either of the following events:
 - (a) the Customer uses any part of the Project for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - (b) the Customer has not notified Newicon of any non-compliance with the Project Specification within 28 days of delivery of the Project.
- 4.3. If any non-compliance with the Project Specification results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's subcontractors or agents for whom Newicon has no responsibility (Non-Supplier Defect), acceptance of the Project shall be deemed to have taken place notwithstanding such Non-Supplier Defect. Newicon shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay Newicon in full for all such additional services and products at fees to be agreed.
- 4.4. A quotation or estimate is valid for 30 days and does not constitute an offer to supply.
- 4.5. Signature of any delivery note by an agent, employee or representative of the Customer shall be deemed conclusive proof of delivery and acceptance.

5. DELIVERY

- 5.1. Any time or date stated for delivery is given as an estimate only and shall not be of the essence but Newicon shall use its reasonable endeavours to meet estimated delivery dates.

6. FEES, CHARGES AND EXPENSES

- 6.1. No costs advice or costs estimate we may give shall amount to a fixed fee arrangement unless a fixed fee is clearly specified.
- 6.2. Unless a fixed fee or other special fee arrangement has been agreed and confirmed in writing by us, the basis for calculation of our fees is by reference to the time spent on a particular matter, whether or not it is completed.
- 6.3. Time is charged at an hourly rate, which is liable to be reviewed from time to time. You will be notified of hourly rates which apply. In any matter running for more than 12 months it is intended that the rate will be reviewed, but an increase of 6% per annum will apply unless you are notified that the increase will be either higher or lower than that figure.
- 6.4. For retainer or support work, hours spent are calculated as hours agreed in the time period (typically one month). The number of hours agreed is defined in the support agreement.
- 6.5. Where any aspect of your project is exceptionally complex or urgent, or requires particular skill, attention or specialised knowledge we reserve the right to charge a higher fee. Advance notice will be given where possible.
- 6.6. Where requested we will endeavour to provide an estimate of our likely fees for action on a particular matter. If your instructions change or a matter becomes more complex or time consuming than envisaged we will where possible advise you any revision to our estimate.
- 6.7. Newicon shall invoice the Customer in respect of the Charges in accordance with the terms of the Project Plan. The Customer shall pay to Newicon the Charges set out in each invoice within 14 days of the date of the invoice. All Charges are exclusive of VAT.
- 6.8. If the Customer fails to pay any amount payable by it in accordance with the terms of the Agreement, Newicon shall be entitled to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.9. When a fixed fee for a project or piece of work has been agreed it will be on the assumption that the nature and scope of the work involved remains fixed. We reserve the right to recalculate the applicable fees if we deem the nature or scope of the work to have changed from that initially agreed.

- 6.10. If disputes arise based on fixed fee or other pricing arrangements then we will fall back to our standard terms where charges are calculated based on hours spent on a particular matter, reference clause 6.3, 6.4
- 6.11. In addition to Newicon's own professional fees we will charge you all expenses which we have incurred or for which we have become liable on your behalf, such as travelling expenses or software licence fees. We will not normally pay such expenses on your behalf unless funds have already been provided by you for that purpose.

7. TECHNOLOGY AND ESTIMATES

- 7.1. All estimates provided by Newicon are premised on the assumption that Newicon will utilise technology choices deemed suitable and appropriate for the project's requirements. These choices will be based on a technology stack that Newicon considers to be suitable for the project's execution.
- 7.2. In the event that the Client wishes to incorporate any new technology components not explicitly listed or previously agreed upon in the project's initial scope, such requests will be subject to review by Newicon.
- 7.3. It is understood and agreed that the introduction of any new technology components may constitute a change to the project's original scope. Consequently, such changes may have an impact on the project's estimated timings and costs.
- 7.4. Should there be a need to incorporate any new technology components as per the Client's request, Newicon reserves the right to reassess the project's estimates and timelines accordingly. The Client will be duly notified of any changes to the project's scope, estimated costs, and completion timeline.

8. WARRANTIES

- 8.1. Newicon shall perform the Services with reasonable care and skill.
- 8.2. The Agreement sets out the full extent of Newicon's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

9. LIMITATION OF REMEDIES AND LIABILITY

- 9.1. Nothing in the Agreement shall operate to exclude or limit Newicon's liability for (a) death or personal injury caused by its negligence, (b) fraud or (c) any other liability which cannot be excluded or limited under applicable law.
- 9.2. Newicon shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any

indirect or consequential loss or damage.

- 9.3. Subject to clause 8.1, Newicon's aggregate liability in respect of claims arising out of or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall not exceed the greater of:

a) 100% of the total Fees paid by the Customer to Newicon under this Agreement,

or

b) £100,000.

For the purposes of this clause, the total Fees shall be calculated as the cumulative sum of all invoices paid by the Customer to Newicon, linked to the relevant project, from the commencement of the project up to the date of the claim.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. All work activities and custom design and code for your project will be your IP upon receipt of payment for that work. When work includes additional libraries then the individual terms for those libraries apply. Newicon carefully selects and uses appropriate open source libraries for each project, as appropriate, but this can change due to specifics of a project.
- 10.2. We retain all copyright and intellectual property rights in all material developed, designed or created by us during the course of carrying out your instructions including systems, software, know-how, reports, written advice, drafts, source code and working papers.
- 10.3. The indemnities in this clause 9 are subject to the following conditions:
 - (a) the indemnified party promptly notifies the indemnifier in writing of the claim;
 - (b) the indemnified party makes no admissions or settlements without the indemnifiers prior written consent;
 - (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - (d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 10.4. Once Newicon has received payment in full from the Customer, any intellectual property generated by the project becomes the full property of the Customer. This does not include pre-existing IP Newicon have utilised to generate the project such as internal tooling, base frameworks or pre-existing design assets.
- 10.5. Newicon shall deliver the full source code to the customer on completion of work once payment in full has been made. The customer may then host the platform with Newicon or on a hosting platform of

their choice.

- 10.6. Newicon will retain the intellectual property and copyright of its preexisting base framework background technology, internal tooling and design assets. Newicon retains a directory in the source code named 'newicon' that represents our library of background technology and intellectual property. Newicon grants full permission for the customer to use this in the context of the application developed but prohibits the customer or any third party from utilising the background technology for any activities deemed competitive with Newicon.
- 10.7. Newicon will retain the intellectual property rights of base design assets and design libraries utilised in the project
- 10.8. Any future and additional code produced for the customer's specific project, either by Newicon or another development provider, will remain the customer's IP.

11. PROJECT CONTENT

- 11.1. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).
- 11.2. The Customer shall indemnify Newicon against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

12. TERM AND TERMINATION

- 12.1. The Agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 11) terminate automatically on Acceptance of the Project and payment of all Charges.
- 12.2. Either party may terminate the Agreement immediately at any time by written notice to the other party if:
 - (a) that other party commits any material breach of its obligations under the Agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or
 - (b) (i) that other party ceases to trade (either in whole, or as to any part or division involved in the performance of the Agreement); or (ii) that other party becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or (iii) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent

amalgamation or reconstruction).

- 12.3. On expiry or termination of the Agreement, all provisions of the Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

13. FORCE MAJEURE

- 13.1. A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement shall promptly notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue.
- 13.2. We shall not be liable for failure to perform or for any delay in performing our obligations if the failure or delay is due to causes beyond our control including but not limited to extreme weather, riot, gross misconduct, curfew, war, terrorism, industrial action, the conduct of any police or other official investigation.

14. CONFIDENTIALITY

- 14.1. Newicon shall protect the Confidential Information of the Customer against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 14.2. Confidential Information may be disclosed by Newicon to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 14.3. The obligations set out in this clause 13 shall not apply to Confidential Information which Newicon can demonstrate:
 - (a) is or has become publicly known other than through breach of this clause 13; or
 - (b) was in Newicon's possession prior to disclosure by the Customer; or
 - (c) was received by Newicon from an independent third party who had full right of disclosure; or
 - (d) was independently developed by Newicon; or
 - (e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that Newicon gives the Customer prompt written notice of the requirement.
- 14.4. The obligations of confidentiality in this clause 13 shall not be affected by the expiry or termination of the Agreement.

15. GENERAL

- 15.1. Neither party may assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

- 15.2. The Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes and replaces any and all prior agreements, understandings or arrangements between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to the Agreement except as expressly stated in the Agreement.
- 15.3. The Agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.
- 15.4. Any variation of or amendment to the Agreement shall be in writing and signed by or on behalf of both parties to it.
- 15.5. If any provision (or part of a provision) of the Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.6. The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England. The parties agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

16. DATA PROTECTION

- 16.1. Newicon and the Customer shall respect the confidentiality of the respective business interests of the other and comply with all relevant data protection requirements.
- 16.2. Newicon shall maintain the confidentiality and security of all data available to it in respect of the clients of the Purchaser including, but not limited to, any access codes, user IDs or similar which allow access to client data on the website of the Purchaser.

17. MARKETING USE

- 17.1. Newicon may describe its role in projects in promotional and marketing materials and take credit for authorship and, if not expressly objected to, include a link within and to the Client's website.

18. SUPPORT AND RETAINER BASED SERVICES

- 18.1. The number of recurring hours on a support or retainer basis will be defined in the support agreement

- 18.2. By default support and retainer hours do not roll over into subsequent months (or other time periods agreed). Newicon must ensure the ability to provide support services (such as staff available to work on issues and the provision of a helpdesk) whether support issues occur or not and therefore support hours agreed are considered spent at the end of each time period.

- 18.3. Newicon may choose to provide additional hours of support beyond the initial support agreement for the time period. Newicon reserves the right to charge extra for any additional time spent beyond the support agreement within each time period.

19. STAFF POACHING

- 19.1. If the Client hires or otherwise engages (whether directly or indirectly, including through an affiliated company or third party) any employee of Newicon who has been involved in the provision of services under this agreement, within 12 months of the end of such involvement, the Client agrees to pay a recruitment finder's fee.
- 19.2. A flat fee of £15,000 plus £15,000 in lost revenue representing one month's typical billing.
- 19.3. This fee shall be payable within 30 days of the employee's start date with the Client.

20. HOSTING SERVICE(S)

- 20.1. Newicon will use reasonable efforts to maintain availability of service but does not guarantee that the Hosting Service(s) will be fault free. Any fault found with the Hosting Service(s) must be reported as soon as possible to Newicon by either by telephone or support email at support@newicon.net. The Client accepts that the Hosting Service(s) may be subject to downtime caused by scheduled or emergency maintenance or repair.
- 20.2. The Client is responsible for keeping secure the login name and password to their area on the Server and the integrity of their data.
- 20.3. The Client agrees not to use the Hosting Service(s) to;
- i Upload any virus, trojan or malware which could infect the server(s) or any other machines or allow anyone to store or download infected files;
 - ii Publish or disseminate defamatory material or any material which could be in breach of the civil or criminal laws of England and Wales;
 - iii. Gain access to any information or resources of a third party without permission;
 - iv. Send unsolicited or spam email;
 - v. Reduce the performance of server(s) to the detriment of other users;
 - vi. Upload any material which, in the sole discretion of Newicon, may be contrary to public decency and morality including (but not limited to) hate content, pornography or overtly tasteless material. The Client accepts that the Supplier may inspect the server(s) at any time and, if any such material has been uploaded,

is being linked to or has been transmitted, may immediately terminate the Hosting Service(s).

- 20.4. Newicon reserves the right to add, improve, modify or deactivate individual features, applications, scripts and programs as necessary in the interests of technical progress, security or availability of technical support to ensure the stable operation and integrity of the Hosting Service(s). The Client agrees to cooperate and be responsible for managing any related adjustments to the Hosting Service(s) if requested to do so.
- 20.5. Newicon shall take reasonable steps to ensure that any deactivation of individual features, applications, scripts or programs will not result in changes to a core function. If such changes result in changes to a core function and Newicon is unable to provide a viable alternative, then the Client shall be entitled to a prorated refund on cancellation.
- 20.6. Newicon is not liable for any loss, claim or damage caused by:
 - i. Failure of backup;
 - ii. Failure by the Client to make and store regular offsite backups outside of the Hosting Service(s);
 - iii. Failure of supply of the Hosting Service(s) within a specific timescale;
 - iv. Scheduled or emergency downtime;
 - v. Corruption and/or loss of data or code;
 - vi. Unauthorised access to the Hosting Service(s).

21. THIRD PARTY PRODUCTS AND SERVICES

- 21.1. The Supplier makes no warranty of any kind, whether express or implied, regarding any third-party products, third party content or any software, plug-ins, equipment, or hardware obtained from third parties that are used with or on the Client's website.
- 21.2. The Supplier is not responsible for third-party plugins or software that may become unusable or affect performance of the Service(s) because of:
 - i. updates performed during maintenance or development;
 - ii. issues caused by the action or inaction of a licensor;
 - iii. withdrawal of a product or service by a licensor;
 - iv. change in third party licence terms;
 - v. refusal by a licensor to extend licence terms;
 - vi. failure by the Client to adhere to or maintain awareness of third-party licence terms.

22. SEVERANCE AND APPLICABLE LAW

- 22.1. Should any of the terms of business be held to be invalid, the remainder will continue with full force and effect. The terms of business shall be governed by and construed in accordance with the laws of England and Wales. Any dispute arising out of our engagement or those terms shall be subject to the exclusive jurisdiction of the Courts of England and Wales