



Sonin

## Standard Terms of Business

10 March 2017 • INT-SON-TERMS-002.1

## Application Development Agreement

**THIS AGREEMENT** is made on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ or the date the Proposal is signed, whichever is the earlier.

### **BETWEEN:**

1) Big Orange Software Ltd (*trading as Sonin*) a company registered in England with company number 6365359 whose registered office is at 34 Bell Street, Reigate, Surrey RH2 7SL (the Supplier)

and

2) The company or individual requesting the services of Big Orange Software (the Client).

together, 'the Parties'

### **BACKGROUND:**

1. The Supplier is in the business of developing and designing mobile and web based application solutions; and
2. The Client wishes to engage the Supplier as an independent contractor of the Client for the purpose of designing and developing a mobile and/or web based application solution(s) ("Application")

3. In accordance with this Agreement, the Client will purchase and the Supplier will supply the goods and/or Services as specified in the signed Proposal(s) attached hereto

### **IT IS AGREED** as follows:

#### **1. Definitions**

- 1.1. "Confidential Information" means all such information and data provided by one party to the other in confidence and marked as such upon transfer.
- 1.2. "Goods" and "Services" shall mean the design and development of mobile and/or web based application solution(s) to be delivered by the Supplier to the Client in accordance with this Agreement and the Proposal.
- 1.3. "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including

all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

1.4. "Price" shall be the Supplier's price to provide the Goods/Services, as set out in the Proposal, exclusive of VAT

1.5. "Proposal" shall mean the Supplier's offer or bid to provide the Goods and/or Services, including any amendments or attachments thereto.

1.6. "User Acceptance Testing Period" and "UAT Period" shall mean a period of 30 (thirty) days after release of the Application into a live environment, or such other period as may be agreed in writing between the Parties, during which the Client may test the app in a live environment and report issues encountered to the Supplier for resolution.

## 2. Terms & Conditions

2.1. This Agreement constitutes the whole agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.

2.2. This Agreement shall be governed by and construed in accordance with the laws of England.

2.3. The Courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings and to settle any disputes including non-contractual disputes which may arise out of or in connection with this Agreement and, for such purposes, each Party irrevocably submits to the jurisdiction of the Courts of England.

## 3. Goods and Services

3.1. The Goods and/or Services shall conform in all respects with the Proposal, including any Application, drawings, specifications, descriptions or other requirements stated in the Proposal.

3.2. All Goods shall be of satisfactory quality and fit for purpose and shall, as far as reasonably possible, be equal in all respects to relevant samples or patterns provided by or accepted by the Client.

3.3. All Services shall be performed to the highest standard that might reasonably be expected from a supplier skilled and experienced in providing services of the same nature of the Services who is acting prudently. The products of any Services must be free from all defects including (to the extent if any that the Supplier is responsible for design), defects in design.

3.4. The Client shall have the right to inspect and test the Goods and/or the Services, following which the Client shall be entitled to reject all Goods and/or

Services which do not conform with the Proposal or are not fit for purpose and the Supplier shall make good any defects discovered and reported during the UAT Period with the exception of defects arising from materials provided by the Client or a third party over which the Supplier has no control.

3.5. Unless otherwise stated to the Client in writing, the Supplier shall attempt to make good any such defects within 14 days

3.6. Any Goods and/or Services rejected shall be replaced or re-performed as the case may be at the Client's request; the cost of which shall be agreed in advance between the.

3.7. As far as it can reasonably do so, the Supplier will ensure that the Goods and/or Services comply with all relevant requirements of any relevant and applicable UK statute, having legal effect which may be in force when the Goods are delivered and/or Services performed as the case may be.

#### 4. Term and Termination

4.1. The Agreement shall commence on the signing of the Proposal by the Parties and shall remain in force until the Goods and/or Services have been provided by the Supplier, and the Supplier has been paid in full for such Services (the "Term") unless terminated by either party on thirty days written notice.

4.2. Where the Client terminates this Agreement during the development of the Application software, the Client shall pay the Supplier for all Services carried out by them up to the date of termination in accordance with the Price and terms as stipulated in the Agreement.

4.3. Without prejudice to any other rights or remedies which the Parties may have, either party may terminate the Agreement without liability to the other immediately on giving notice to the other if:

- 4.3.1. the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- 4.3.2. the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or enters into an agreement with its creditors; or
- 4.3.3. the other party suspends or ceases, or threatens to suspend or cease, to carry on

all or a substantial part of its business; or

4.3.4. there is a change of control of the other party.

4.3.5. If either party is delayed or prevented from performing their obligations under the Agreement by circumstances beyond its reasonable control (including without limitation any form of government intervention strikes and lock-outs relevant to the Agreement or breakdown of plant) such performance shall be suspended and if it cannot be completed within a reasonable time the Agreement may be cancelled by either party.

4.4. Notices of termination must be made in writing, which in this case shall be satisfied by postal mail or email. Notices of termination via email must be addressed to:

4.4.1. For the Supplier:

info@sonin.agency

4.4.2. for the Client:

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4.5. In the event of Termination by either party following the development of the Application, the Client shall pay the Price of all development costs to the Supplier in accordance with the Proposal.

4.6. Subject to 4.5 above, the Supplier shall provide the Client with all necessary information, software and codes to transfer the maintenance of the Application to another supplier and shall on the request and at the expense of the Client, place such codes in an escrow account.

## 5. Intellectual Property Rights

5.1. The Supplier warrants that neither the code produced nor any imagery sourced for the Client will infringe any Intellectual Property Rights or any other legal or equitable right of any person.

5.2. The Client warrants and unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to the Supplier for inclusion in the Application, Good or Services, are owned by the Client, or that it has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify, and defend the Supplier and its subcontractors from any liability (including legal fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by the Client.

5.3. The Parties shall indemnify each other against all actions costs claims demands expenses and liabilities whatsoever resulting from any actual or alleged

infringement as mentioned in Condition 5.1 and 5.2

5.4. Each party shall be entitled to retain all Intellectual Property Rights owned by it which are in existence prior to commencement of the Services, or which are or licensed to it by a third party.

5.5. The Supplier shall grant the Client an irrevocable, royalty free licence to use the Intellectual Property rights that are retained under condition 5.4 above to enable the Client to properly use the products of the Services.

5.6. Save for the Intellectual Property Rights that are to be retained under condition 5.4, the Supplier hereby agrees to assign to the Client, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services.

5.7. The Supplier shall not take responsibility for any copyright infringements caused by materials submitted by the Client and reserves the right to refuse any material of a copyrighted nature unless adequate proof is given of permission to use such material. The Supplier will ensure that appropriate licences are obtained for any materials sourced by them.

## 6. Data Protection

6.1. The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Client:

6.1.1. it shall act only on instructions from the Client; and

6.1.2. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

6.2. In this clause 6, Personal Data has the meaning given in the Data Protection Act 1988

## 7. Confidential Information

7.1. Each party shall protect the Confidential Information of the other party 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.

7.2. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

7.3. Confidential Information shall exclude information which is:

7.3.1. Trivial or obvious;

7.3.2. Already in the public domain or comes into the public domain

other than by reason of a breach of the Agreement; or

7.3.3. Which is required to be disclosed by law or a relevant court order.

## 8. The Application

8.1. The Parties undertake to agree a full project specification in accordance with this Agreement and the Proposal.

8.2. The Supplier will not be liable or become involved in any disputes between the Client and the end users and shall not be held responsible for any wrong doing on the part of the Client

8.3. The Supplier will use all reasonable endeavours to ensure consistent availability of all Services.

8.4. The Parties acknowledge that the Application being developed for the Client is for the ultimate benefit of the end users. Therefore, whilst the Supplier has no liability to the end user, it acknowledges that complaints may be made by end users as to the functionality or service of the Application and shall notify such reports to the Client. Any defects or faults shall be addressed on a case by case basis, with the costs to be agreed in advance between the Parties.

8.5. Once an application has been designed and completed, the final balance of payment is then due in accordance with clause 12 below. There are no exceptions

to this, i.e If the Client decides it no longer wants the application.

## 9. Insurance and Liability

9.1. The Supplier shall not be liable for any losses incurred by the Client, through its use of any software created for the Client, except where arising from its own negligence.

9.2. The Supplier holds the relevant insurance to cover any claims which may rise or result primarily from (i) its gross negligence or wilful misconduct arising from or connected with the carrying out of its duties under this Agreement, or (ii) breach of any of its obligations under this Agreement.

9.3. The Client shall indemnify and hold harmless the Supplier from and against all claims that it may suffer from or incur and that arise or result primarily from (i) the operation of its business, (ii) the breach or alleged breach of, or its failure or alleged failure to perform under, any agreement to which it is a party, or (iii) breach of any of its obligations, under this Agreement; provided, however, none of the foregoing result from or arise out of the actions or inactions of the Supplier.

9.4. Neither party shall be liable to the other for (i) death or personal injury caused by negligence (ii) fraud or fraudulent misrepresentation; or (iii) any other

liability that cannot be excluded or limited by law.

## 10. Compatibility

The Supplier shall use reasonable care and skill to ensure that any developed/designed site or application will function correctly on the operating system specified or the server it is initially installed in.

## 11. Client's Duties

11.1. The Client shall ensure that the specific representation of its Application and the content of the documents to be processed and created is not pornographic, sexist, extremist, or a glorification of violence, and that such content does not violate third party rights or UK law.

11.2. The Client shall provide the Supplier with all necessary information and data required to perform Services and shall take all measures that are required to perform services within the realm of its responsibility.

11.3. The Parties shall use all reasonable endeavours to inform the other immediately of the purging, sale, lease or transfer to a new owner of a domain that is the subject matter of an agreement.

11.4. The Client undertakes during the term of this agreement, on its own behalf or in the service or on behalf of others not to induce or attempt to induce any officer, director, or employee to leave the

Supplier, or solicit the business of any customer (or Permitted Subcontractor) of the Supplier.

## 12. Price & Payment

12.1. A deposit is required from any new Client before any Services are carried out.

12.2. Any outstanding accounts for work carried out by the Supplier or its affiliates shall be paid in full, no later than 30 days from the date of the invoice, unless by prior arrangement with the Supplier.

12.3. Once a deposit is paid and work completed the Client shall pay the balance of Price in full in accordance with the payment schedule set out in the Proposal.

12.4. In the event the Supplier has completed the designing part of the work and that completion of the application is dependent on materials submitted by the Client, the Supplier shall reserve the right to invoice the Client for the Services carried out to date. This proportion of the Price shall be paid no later than 30 days from the date of invoice, unless arranged prior with the Supplier.

12.5. If accounts are not settled or the Supplier has not been contacted regarding any delay, the Supplier reserves the right to deny access to the



related Services and/or remove Services relating to the application.

12.6. Following consistent non payment of an invoice our solicitors will contact the Client, with a view to taking the matter further and if need be to seek payment through legal procedures, and if necessary court summons.

### 13. Assignment

Neither Party shall assign or transfer any of its rights or obligations under this Agreement to any other person without the other's written consent.

### 14. Variation

No variation of the Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

### 15. Waiver

Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

### 16. Severance

16.1. If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be

deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

16.2. If a provision of the Agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

16.3. Nothing in this clause shall limit or exclude any liability for fraud.

### 17. No Partnership or Agency

Nothing in the Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### 18. Complaints & Dispute Resolution

18.1. The Client shall raise any complaints received by end users directly by email to the Supplier, giving sufficient information to locate the material (such as an url) and clearly outlining the grounds for complaint.

18.2. The Supplier will endeavour to respond to the Client and rectify the subject matter of the complaint within 3 working days where the work is covered by a maintenance agreement, or by mutual written agreement between the Parties.

18.3. Where the complainant feels that the nature of the complaint is too serious to be dealt with, or where a satisfactory conclusion has not been reached under 19.1 above a formal complaint should be made in writing to the Supplier who will acknowledge receipt within seven days of its receipt and provide a formal written response to the Client within 30 days.

18.4. If any dispute arises in connection with the Agreement, which cannot otherwise be resolved under this clause 19, the Parties shall meet in good faith to resolve the dispute following a written request from one party to the other, before resorting to legal action.

## 19. Third Party Rights

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

Signed for and on behalf of the Client

Signed \_\_\_\_\_

Print Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Signed for and on behalf of the Supplier

Signed \_\_\_\_\_

Print Name \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_