Standard Terms and Conditions of Business for Software Development

Introduction:

These Terms and Conditions and any Client Agreement made under them represent a legally binding contract between Computer Confidence Ltd and the client specified in the Client Agreement to which they are attached. Clients indicate their intention to enter into a legally binding contract with Computer Confidence Ltd by signing and dating a copy of their individual Client Agreement (to which a copy of these Terms are attached) and returning the full document to Computer Confidence Ltd. Any contract so entered into is governed by the law of England and Wales and is subject to the jurisdiction of the English courts. Breach of any term contained in these Terms and Conditions or in the individual Client Agreement to which they are attached may therefore result in legal action.

Clause:

1) **Definitions:**

   References in these Terms and in any Client Agreement to which they are attach to:

   i) "Computer Confidence" or "The Company" means Computer Confidence Ltd 1436 London Road, Leigh-on-Sea, Essex, SS9 2UL

   A Limited Company registered in England and Wales Registration No.: 3114995

   ii) "The Client" means
   The Client specified in the Client Agreement to which these Terms are attached.

   iii) "The Client Agreement" means
   The agreement setting out details of the individual client, the services to be provided to that client, payment arrangements in respect of those services and any other provisions specific to the individual client.

   iv) "The Services" means
   The services specified in the Client Agreement.

   v) "Software" means
   A computer program or programs and associated data files designed to perform a specific series of tasks.

   vi) "Installation version" means
   A version of the software which the Client may use for additional installations and reinstallation.

   vii) "The contract amount" means
   the amount of money to be charged in respect of the individual contract for time and materials only and is specified in the Client Agreement.

   viii) The meaning of "time and materials" will depend upon the exact nature of the individual contract and is therefore defined in the Client Agreement.

   ix) "Supplies" are items of hardware, software or consumables purchased at the client's request.

   x) "Physical access" means
   the access to premises, hardware and other physical resources reasonably required by the Company to fulfil its obligations as set out in Clause 4.i below and in the Client Agreement.

   xi) "Virtual access" means
   the access to systems, software and other electronic resources reasonably required by the Company to enable it to fulfil its obligations as set out in 4.i below and in the Client Agreement.

2) **Services:**

   i) Standard:

   The Company's standard software development services include:

   a) Ascertaining the Client's functional requirements

   b) Drawing up a functional specification

   c) Designing and developing the program(s) necessary to fulfil the specification

   d) Performing all appropriate testing

   e) Performing all reasonable modifications arising from user acceptance testing consistent with the original functional specifications.

   ii) Additional:

   In addition to the standard services listed in Clause 2.i (above), at the request of the Client and on payment of the appropriate fee (specified in the Client Agreement), the Company will undertake periodic reviews and maintenance of any software which is the product of the standard services.

3) **Fees and Title:**

   i) Payment Policy:

   a) Fees are charged either on an hourly or a monthly basis or on any other basis agreed with the individual Client and specified in the Client Agreement.

   b) The contract amount is agreed with the individual Client and specified in the Client Agreement.

   c) Out-of-pocket expenses and the cost of supplies will be agreed with the Client.

   ii) Invoicing:

   Clients will be invoiced either in accordance with a schedule attached to the Client Agreement or within a period of time after completion of work as specified in the Client Agreement.

   iii) Payment Method:

   The Company can accept payment in the following ways:
   - Cash
   - Cheque
   - Direct Debit
   - Standing Order

   iv) Due Date for Payment:

   Payment will normally fall due 14 days from the date shown on the invoice unless varied by the Client Agreement. These payment arrangements may be varied in response to changing circumstances.

   v) Overdue Payments:

   a) Interest is chargeable on all overdue payments commencing one calendar month after the due date for payment up to and including the date of settlement at the rate of 8% above the base rate.

   b) Failure to settle invoices on or before the due date for payment may result in changes to credit arrangements.

   vi) Title to all goods and services remain with The Company until paid in full. Should a refund be made or there is any dispute over payment, title shall revert back to The Company.

4) **Rights and Obligations:**

   i) The Company:

   Computer Confidence undertakes to:

   a) provide services of the nature and to the level specified in clause 2 of these terms

   b) take all reasonable care and exercise all due diligence to ensure those services are of the quality and standard of a reasonably competent service-provider in the field of software development

   c) after initial installation, provide the Client with an installation version of the software.

   d) Where the additional services detailed in Clause 2.ii (above) are to be provided, carry out reviews and maintenance as agreed in the Client Agreement.

   ii) The client:

   The Client undertakes to:

   a) Provide the Company with all system information necessary to enable it to provide the agreed services

   b) Specify the nature of the application to be developed

c) provide all the necessary background information and resources to enable an accurate functional specification to be created, including, where possible, examples of inputs and desired outputs;

d) provide Details and examples of existing data structures (where appropriate)

e) upon delivery of the software, Undertake user acceptance testing

f) provide complete and accurate feedback to the Company concerning the results of such testing

g) Provide all reasonable physical and virtual access to enable performance of installation tasks

h) Where a permitted number of installations is specified in the Client Agreement, ensure that number is not exceeded

i) Where the additional services detailed in Clause 2.ii (above) are to be provided, provide all reasonable physical and virtual access necessary to enable the Company to carry out reviews and maintenance as agreed in the Client Agreement.

iii) Intellectual Property:

All rights, intellectual and otherwise, to all software developed under these terms remain with the Company, subject to the following options:

a) the purchase of a user's licence

For a licence fee to be specified in the Client Agreement, the Client will receive:

(1) An installation version of the software

(2) A licence to install and use that software in accordance with the terms of the licence, which is attached as an appendix to the Client Agreement.

b) Outright Purchase:

For the payment of a premium over and above the licence fee, in addition to the installation version of the software, the Client will receive:

(1) All appropriate source code and

(2) The non-exclusive right to use such code.

The precise terms of the purchase will be specified in the purchase agreement, which is attached as an appendix to the Client Agreement.

5) Limitations and Exclusions:

In addition to any limitations or exclusions of liability specified elsewhere in these Terms or in the Client Agreement, the Company can accept no liability for: any losses howsoever arising from:

i) Any loss or corruption of data howsoever arising

ii) Any issues relating to internet services to which Clients' pc's and/or file servers may connect.

iii) The acts or omissions of third parties including (but not exclusive to):

a) suppliers of goods or services:

This includes such suppliers engaged by the Client or the Company, either before, during or after the life of this contract. It does not include authorised agents of the Company acting within the limits of their authority.

iv) Any fire, flood, industrial action or other event beyond the reasonable control of the Company.

v) In any event, any damages for which the Company may be liable for any breach of its obligations as set out in 4.i above are limited to damages for direct financial losses only.

6) Term and Termination:

i) Term:

The commencement and termination dates are specified in the Client Agreement.

ii) Termination:

a) Automatic Termination:

The contract will come to an end automatically on the termination date specified in the Client Agreement.

b) Premature Termination by the Company:

The Company reserves the right to terminate before the termination date if the Client commits a fundamental breach of this agreement, including (but not exclusive to) asking the Company to do anything unethical or contrary to law.

In this event, the contract will be terminated immediately by verbal notice. This verbal notice will then be confirmed in writing, delivered by hand, fax, email or Special or Recorded Delivery post. Termination is effective upon confirmation that the Client has received such written confirmation. The date of such confirmation then becomes the revised termination date.

In the event of premature termination resulting from a fundamental breach by the Client, it is the Client's responsibility to arrange for the completion of any outstanding work at their own expense.

In these circumstances, the revised termination date automatically becomes the due date for payment with interest being chargeable as set out in Clause 3 above.

Any sums paid by the Client to the Company in advance for specific purchases becomes immediately repayable to the Client provided such purchases have not already been made by the revised termination date.

Any materials exchanged between the Company and the Client for the purposes of performing the contract will be returned to their legal owners within 30 days of the revised termination date.

c) Premature Termination by the Client:

The Client has the right to terminate before the termination date.

In this event the Client will communicate the decision to the Company in writing stating the reasons for the termination and the commencement date of notice period. The duration of the notice period will be specified in the Client Agreement.

In the event of any work being incomplete at the revised date of termination, it is the Client's responsibility to arrange for the completion of any outstanding work at their own expense.

In these circumstances, the revised termination date automatically becomes the due date for payment with interest being chargeable as set out in Clause 3 above.

Any sums paid by the Client to the Company in advance for specific purchases becomes immediately repayable to the Client provided such purchases have not already been made by the revised termination date.

Any materials exchanged between the Company and the Client for the purposes of performing the contract will be returned to their legal owners within 30 days of the revised termination date.

7) Complaints Procedure:

If a complaint cannot be resolved informally:

i) it should be submitted in writing to the Company, marking the envelope "Complaints". The matter will then be investigated thoroughly by the Managing Director who will investigate the matter thoroughly, including arranging a meeting with the Client where necessary. Following the investigation, a written decision will be provided to the Client.

ii) If the Client does not accept this decision, they should submit a written appeal, setting out their complaint, the Managing Director's decision and why this decision is not acceptable, to the Company's legal department, which will then carry out its own thorough investigation, including, where necessary, arranging meetings with the parties, together or separately. Following the investigation, the legal department will provide its decision, in writing, to both parties. This decision is final.

8) Severance:

If any provision of this contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions of the contract shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.