

1. INTRODUCTION

- 1.1** This page sets out the Specific Terms on which (together with the General Terms and Order Terms forming part of the Agreement between us) we, Fonezone Telecommunications Limited trading as Barclay Communications, a company incorporated in Northern Ireland under registered company number NI040916, whose registered office is at Grove House, 145 - 149 Donegall Pass, Belfast, County Antrim, BT7 1DT ("we" or "us") provide software development or maintenance services ("Services") to you as our client ("you"), including the design, development, and supply of the Deliverables, as may be more specifically set out within the relevant Order Terms.
- 1.2** Unless otherwise defined herein, any terms used in these Specific Terms shall have the meaning attributed to them in the General Terms.
- 1.3** These Specific Terms apply to the Agreement between you and us for the supply of the Deliverables, or provision of Services to you. Please note that by ordering any such services or Deliverables from us, you agree to be bound by the terms of our Agreement. Where we provide any products or services to you other than the Deliverables or the Services the provision of such products or services shall be governed by the relevant Additional Terms applying to such products or services.
- 1.4** You should print a copy of these Specific Terms or save them to your computer for future reference.
- 1.5** We may amend these Specific Terms from time to time as set out within the General Terms. Every time you sign or agree new Order Terms for the provision of Deliverables please check these Specific Terms and the General Terms to ensure that you understand the terms which will apply to our Agreement at that time. These Specific Terms were most recently updated on 19th May 2014.

2. DEFINITIONS & INTERPRETATION

- 2.1** The following terms shall have the following meanings in these Specific Terms:
- "**Acceptance Date**" means the earlier of either: (i) the date of successful completion of acceptance testing which demonstrates that the Software functions in all material respects in accordance with the Specification; or (ii) the date upon which you confirm that the Software can be deployed for use or made available publicly;
- "**Agreement**" means the agreement between us for the provision of the Deliverables or the Services;
- "**Charges**" means the total charges set out within the Order Form and the Proposal and otherwise provided for under the Agreement, to be paid on the dates specified by us in the Proposal (or otherwise stipulated by us) in return for the supply of the Deliverables;
- "**Clause**" means a clause of these Specific Terms;
- "**Deliverables**" means the Software and the Documentation;
- "**Documentation**" means the documentation, if any, supplied to you by us in connection with the Software;
- "**Download Platform**" means the relevant download platform, if applicable, for downloading of an App, for use on the relevant operating system, by an end-user;
- "**General Terms**" means our general terms and conditions for the supply of products and services, which shall apply to the Agreement between us in addition to these Specific Terms;
- "**Materials**" means any content, information or data, including without limitation any text or images, provided by you from time to time in connection with or for incorporation in the Software;
- "**Order Form**" means the order form provided by us in connection with the Deliverables and the Services;
- "**Order Terms**" means, in respect of the provision of the Deliverables outlined herein, the Proposal, the Project Plan and the Order Form, and the General Terms shall be construed accordingly;
- "**Project Budget**" means the total budget (exclusive of VAT) for design, development and supply of the Deliverables produced by us in accordance with these Specific Terms, as set out in the Order Terms. The parties agree that this budget, and the Charges set out within the Order Terms which reflect the budget, shall be subject to a tolerance variance of +5%, to be

calculated by us at our discretion, such variance to be recoverable from you, and payable upon demand by you upon final invoicing of the Charges;

"**Project Plan**" means the Project Plan to be produced by us in accordance with Clause 3.2;

"**Proposal**" means the proposal submitted to you by us in respect of development of the Software;

"**Server**" means a computer server administered by us or by a third party acting on our behalf;

"**Software**" means either or both of a mobile or computer desktop based application ("**App**") (other than the our WorkPal ® application, or any other third party applications (including SOTI's MobiControl mobile device management software) we may provide or procure the provision of to you from time to time, contracts in respect of which shall be dealt with under separate specific terms and conditions) or website ("**Site**") to be designed, developed and deployed, and, as appropriate, hosted by us for your benefit under the terms of the Agreement;

"**Specific Terms**" means, in respect of the provision of the Deliverables and Services outlined herein, the terms and conditions in this Schedule C;

"**Specification**" means the specification for the Software set out in the Project Plan;

"**Use**" means to read, execute, store, transmit, display, copy (for purposes of loading, storage, execution and transmission or display only) or use the Software in object code form only;

"**Warranty Period**" means the period of 90 days from the Acceptance Date; and

"**Your Representative**" means the person duly authorised by you to act on your behalf for the purposes of the Agreement and identified to us by you under Clause 4.3.

3. SUPPLY

- 3.1** In consideration for payment by you of the Charges, we shall: (a) subject to you providing the Materials by the date(s) requested, develop the Software to the Specification and deliver it to you for acceptance testing; (b) supply and licence the Deliverables to you in accordance with the Agreement.
- 3.2** Following the date of signature of the Order Form, we will produce a Project Plan, indicating the Specification for the Software and any other applicable information. The parties will use all reasonable endeavours to agree the Project Plan within a reasonable period following the date of signature of the Order Form.
- 3.3** Following the Acceptance Date, we will, subject to your on-going compliance with the terms of the Agreement, grant to you a perpetual worldwide, non-exclusive, non-transferable and personal licence to: (a) to Use (and permit your employees, agents and contractors to Use) the App, and to use and permit others to use the Site (as applicable); (b) possess and refer to the Documentation for the purposes contemplated under the Agreement. For the avoidance of doubt, the licence shall not extend to the distribution of the App to end-users via any Download Platform.
- 3.4** You shall not: (a) modify or remove any copyright or proprietary notices on the Deliverables and shall reproduce such notices on any copies of the Software made by you in accordance with Clause 3.5 in the form in which they appear on the original; (b) decompile, reverse engineer, disassemble or otherwise reduce any part of the Software to human-readable form (other than as permitted by law) nor permit any third party to do so; (c) copy (save as otherwise permitted by Clause 3.5 below), make corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software nor permit any third party to do so; or (d) re-licence, sub-licence, rent, lease, timeshare, or act as a service bureau or provide subscription services for the Software, nor assign or give any interest in the Software or the associated Documentation to another person, otherwise than as provided at Clause 13.6 below in respect of the Site.
- 3.5** With respect to Apps designed for you, you may only make one copy of the App for the purposes of back-up and security. However, you acknowledge that you are at all times to be solely

responsible for backing-up all or any of your data processed by or contained within the Software (in either an App or a Site) as and when required.

3.6 Any software programmes proprietary to third parties incorporated within Software shall be licensed to you under the standard licence terms provided by the relevant third parties, and you agree to be bound by such licence terms.

4. CUSTOMER OBLIGATIONS

4.1 You shall: (a) be solely responsible for providing us with all data, information or Materials required in order to develop the Software to the Specification and for obtaining all necessary rights and permissions, and making all necessary payments for such data, information and Materials; (b) be solely responsible for the accuracy and completeness of the data, information and Materials provided; and (c) transmit and store all data, information and Materials in accordance with all applicable laws. You acknowledge that we shall make no effort to validate any data, information or Materials provided by you for content, correctness or usability. If any such data, information or Materials is/are untrue, inaccurate, not current, or incomplete, without limiting any other remedies, we have the right to terminate or suspend your use of, and licence to, the Deliverables, and we, our agents, suppliers and sub-contractors have the right to recover from you any costs or losses incurred as a direct or indirect result of such inaccurate or incomplete information.

4.2 You shall: (a) co-operate with us in all matters relating to the provision of the Deliverables; and (b) be solely responsible for the instruction, management and cost of any third party suppliers or service providers, including, without limitation, the costs of any graphic designer or illustrator, required to deliver the Software.

4.3 No later than five Business Days after the Commencement Date, you shall notify to us the name of the person appointed as Your Representative for the purposes of the Agreement. Your Representative shall have the authority to bind you in all matters relating to the Agreement.

4.4 If our performance of any of our obligations under the Agreement is prevented or delayed by any of your, or your agents', sub-contractors', consultants' or employees', acts or omissions, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay.

4.5 You shall be liable to pay us, on demand, all reasonable costs, charges or losses sustained or incurred by us (including without limitation any direct, indirect or consequential losses) that arise directly or indirectly from your fraud, negligence, failure to perform or delay in the performance of any of your obligations under the Agreement, subject to our confirming such costs, charges and losses to you in writing.

5. CHARGES

5.1 Although the Project Budget will be fixed for the term of the Agreement (subject to the other provisions of the Agreement, and in particular the tolerance variance referred to in Clause 2.1, and with the exception of the Charges for Annual Services or other ad-hoc Services, see below at Clause 10), we reserve our right to alter our prevailing rates for Services at any time and without prior notice.

5.2 All files, information and Materials belonging to you and held by us shall be preserved for so long as we continue to host the Site or the App and provide the Annual Services.

6. INTELLECTUAL PROPERTY RIGHTS & INDEMNITY

6.1 You acknowledge and agree that any and all IP Rights which subsist in or arise in connection with the Deliverables, with the exception of the Materials, belong to us and/or our third party suppliers/licensors and that you shall have no right in or to the Deliverables save the right to use them as permitted by the Agreement.

6.2 You shall use reasonable endeavours to prevent any infringement of the IP Rights in the Software and shall promptly report to us any such infringement that comes to your

attention. Where you wish to licence an App for distribution to end-users via a Download Platform, you shall ensure that each end-user, before starting to use the App, is made aware that the App is proprietary to us and our third party suppliers/licensors. Any such sub-licensing and distribution shall be subject always to separate written agreement between us to ensure that end-users are bound by such end-user licence terms as we may impose from time to time.

6.3 If any third party makes a claim against you that the Deliverables infringe its UK IP Rights, other than infringements referred to in Clause 6.7, we shall indemnify you. To obtain this protection, you must: (a) notify us promptly in reasonable detail in writing not later than 30 days after you receive notice of the claim, or sooner if required by applicable law; (b) give us sole control of the defence and any settlement negotiations; and (c) give us the information, authority, and assistance we need to defend or settle the claim. This indemnity shall be subject to the ultimate cap on our liability contained within the General Terms, in particular clause 11 thereof.

6.4 If we believe that the Deliverables infringe or may infringe the IP Rights of any third party, we may choose to either modify the Software or obtain a licence to allow for continued use, or if these alternatives are not commercially reasonable, we may terminate the Agreement and refund any applicable Charges (or part thereof) you have paid for the Deliverables (less an amount in consideration of your use prior to such termination). For the avoidance of doubt, this indemnity shall not apply where the claim in question is attributable to the possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by you other than in accordance with the terms of the Agreement, use of the Software in combination with any hardware or software not supplied or specified by us (if the infringement would have been avoided by the use of the Software not so combined), or use of a non-current release of the Software. Clauses 6.3 and 6.4 provide you with your exclusive remedy for any infringement claims or damages.

6.5 We acknowledge that any and all IP Rights which subsist in or arise in connection with the Materials belong to you and/or your third party licensors/suppliers.

6.6 You also hereby expressly warrant that you own the IP Rights in all such Materials, or that, where such IP Rights are held by third parties, you are permitted to use and supply the Materials to us for the purposes specified in the Agreement, and that you are entitled to use the Software for the purposes contemplated by the Agreement, and that in so doing, or in fulfilling any of your or our obligations or enforcing any of your or our rights under the Agreement neither we nor you will in any way infringe such third party IP Rights.

6.7 If any third party brings an action or makes a claim against us (or any of our third party sub-contractors) that the Materials infringe its Intellectual Property Rights, you shall indemnify us and/or any such sub-contractor against all losses, damages and expenses in respect of any such action or claim. To obtain this protection, we must: (a) notify you promptly giving reasonable detail in writing, no later than 30 days after we receive notice of the claim, or sooner if required by applicable law; (b) give you sole control of the defence and any settlement negotiations; and (c) give you the information, authority and assistance you need to defend against or settle the claim.

7. CHANGE CONTROL

7.1 Either party may submit written requests for changes to the Agreement (or any part thereof) to the other party during the term of the Agreement. We shall advise you of the likely impact of any such change, including, but not limited to, any effect on the Project Budget.

7.2 The parties shall in good faith discuss changes proposed in accordance with Clause 7.1 as soon as reasonably practicable. Until such time as a change control document is agreed (such agreement not to be unreasonably withheld or delayed by either party) and signed by both parties, covering such change, including any change to the Charges and/or the Proposal, both parties shall continue to perform their respective obligations

under the Agreement as if such change had not been requested.

8. WARRANTY

8.1 We warrant that during the Warranty Period, the Software shall perform substantially in accordance with the Specification and the functions described in the Documentation, if any, when operated properly in the manner specified in the Documentation, and in accordance with the instructions, if any, given to you by us.

8.2 Your sole remedy for breach of the warranty in Clause 8.1 is, as appropriate, to require us to repair or replace (at our option) the defective Software within a reasonable time at no charge to you, provided that any such breach is notified to us during the Warranty Period. You shall provide all information as may be reasonably necessary to assist us in resolving any defect to the Software including, without limitation, providing sufficient information to enable us to re-create the defect. We shall not be obliged to rectify any particular defect if attempts to rectify such defect other than by normal recovery or diagnostic procedures have been made by your personnel or third parties without our permission.

8.3 You acknowledge that you have assessed for yourself the suitability of the Deliverables for your requirements. We do not warrant that the Deliverables will be suitable for such requirements or that any use of the Deliverables will be uninterrupted or error free.

8.4 The warranty in Clause 8.1 shall not apply if: (a) you make or cause to be made any modifications to the Software without our prior written consent; (b) the Software is improperly installed or used in an application for which it was not intended or, in the case of an App, installed used on an operating system other than the one for which it was designed (as indicated by us to you); (c) the failure of the Software to perform is attributable to the Materials, data or information provided by you, or (d) the Software is used (i) otherwise than as permitted under the Agreement, or (ii) outside of the scope contemplated by any provision of the Documentation or the Specification, or (iii) otherwise than as contemplated by the other instructions, if any, given to you by us.

8.5 You warrant that you shall, immediately upon our request, cease any usage of the Software that we inform you infringes the terms of the Agreement.

8.6 You shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, obscene, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party IP Rights) ("**Inappropriate Content**"). We will be the sole arbiter as to what constitutes Inappropriate Content. You shall indemnify us and our third party sub-contractors against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

8.7 We do not accept any responsibility for protection of the Software against security breaches, any loss of data resulting from delays, non-deliveries, mis-deliveries or service interruptions caused by negligence of third parties, or by your errors or omissions. Use of any information provided by us to you is at your risk and we cannot be held liable for the accuracy or quality of information obtained.

9. THE SITE

9.1 The provisions of this Clause 9 apply to the design, development and licensing of a Site only, and do not apply to any App which may be developed for you by us under these Specific Terms.

9.2 We shall only include the Materials, information and data supplied by you on the Site, and then only where possible. Following the Acceptance Date, we agree to grant you "front-end" access to the Site in order to allow you to update the information or content on the Site during the term of the Agreement (for details of what happens on termination of the Agreement see Clause 13.6). You shall ensure that you inform us where specific sections of the Site have been updated in

order to assist us in backing up the relevant parts of the Site. You acknowledge that we have no control over any content placed on the Site by you or by visitors to the Site and that we do not purport to monitor the content of the Site.

9.3 We reserve the right to remove content from the Site, or to suspend hosting of the Site at any time, without terminating the Agreement, where (a) we reasonably suspect such content to be Inappropriate Content, (b) you are in default of the payment of any Charges owed to us pursuant to the terms of the Agreement, or any other contract between you and us, or (c) you are otherwise in default or in breach of any of your obligations under the Agreement.

9.4 We will use reasonable endeavours to design a Site which displays acceptably on most current internet browsers available. However, we do not guarantee that this aim will be achieved in browsers or versions of browsers released after the Acceptance Date, or in browsers which are no longer supported.

9.5 You shall be responsible for checking the accuracy and correctness of the Site prior to confirming to us that the Site may be made publicly available.

9.6 We reserve the right to include a statement on the home page of, or otherwise on, the Site indicating that the Site has been designed by us.

10. ANNUAL SERVICES

10.1 We offer annually renewable hosting, domain renewal and support services as part of our broader Service offering ("**Annual Services**") for either the Site or App.

10.2 Whilst the Charges for such Annual Services set out in the Proposal or Order Form will be fixed for the first year of the Annual Services, the Charges for such Annual Services may be varied year on year thereafter depending on a number of factors, including without limitation the bandwidth or web space used. The Charges for such Annual Services shall be calculated and payable on a yearly basis, commencing from the year beginning on the date the package or Site domain name is first registered (as opposed to, for example, the Acceptance Date) and shall be subject to renewal on the anniversary of such date yearly thereafter. The Annual Services Charges will be invoiced to you approximately one calendar month before each renewal date.

10.3 Where you wish to avail yourself of your right to terminate the Agreement pursuant to Clause 12.2, and to cancel an Annual Services package, you must inform us 3 months before the date of invoicing of the Charges for the Annual Services for that year, otherwise payment of the full Charges for the Annual Services for that year will be required upon termination of the package. No partial refunds will be given for Annual Services packages cancelled during a renewal year.

10.4 For the avoidance of doubt, the additional Charges for any hard coding services provided to you, or for making any additions or amendments to the Software which provide an increased level of functionality shall not be covered by the Charges set out within the Proposal or Order Form, but shall be chargeable at our standard rates for such Services, in accordance with the General Terms, and shall be invoiced to you upon completion of any such Services.

11. EXPORT

You shall be responsible for obtaining any necessary import or export licenses or permits necessary for the sale or use of the Software into any territory where the Software is used or sold and you shall be solely responsible for any and all custom duties, clearance charges, taxes, brokers' fees and other amounts payable in connection with the importation, delivery and use of the Software.

12. TERM AND TERMINATION

12.1 The Agreement between you and us in respect of the provision of the Deliverables shall come into effect on the date of the Order Form and, subject to the remainder of the Agreement, shall continue in force until the termination of the Agreement in accordance with its provisions, including this Clause 12.

12.2 Following the expiry of the Warranty Period, and subject to your payment of all Charges specified within the Project Budget, either party shall be entitled to terminate the Agreement giving 3 months' notice in writing to the other.

13. EFFECTS OF TERMINATION

13.1 Termination of the Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.

13.2 Upon termination of the Agreement due to your breach of the Agreement, or due to the occurrence of any of the circumstances specified in clause 12.2 of the General Terms, you shall, at our request, promptly return to us or otherwise dispose of, as we may instruct, the Deliverables.

13.3 Upon termination of the Agreement for any reason, you shall, at our request, promptly return to us or otherwise dispose of any other materials sent to you other than the Deliverables (other than correspondence which has passed between the parties) and any Confidential Information which you may have in your possession or under your control, and pay to us all outstanding Charges and other payments, including interest, due under the terms of the Agreement.

13.4 All rights and licences granted to you under this Agreement shall terminate on the termination date, save that, where the Agreement has not been terminated by us due to your breach of the Agreement, or due to the occurrence of any of the circumstances specified in clause 12.2 of the General Terms, your licence to the Deliverables, granted pursuant to Clause 3.1, shall continue in full force and effect (without prejudice to our on-going rights to terminate your licence to the Deliverables where you infringe Clauses 3.3, 3.4, 3.6, 4.4, 6.1, 6.2, 6.6, 6.7, 8.5, 8.6, 9.3, 14.2, or any clauses of the General Terms which are to survive termination of the Agreement between you and us, which rights shall, for the avoidance of doubt, survive the termination of the Agreement).

13.5 For security reasons we will not provide you or any third parties with file transfer protocol access to any files relating to the Software maintained on the Server, which may instead be made available by portable electronic media upon request.

13.6 On expiry or termination of the Agreement otherwise than on termination by the termination by us due to your breach of the

Agreement, or due to the occurrence of any of the circumstances specified in clause 12.2 of the General Terms, we shall, upon request, return all Materials to you, and shall provide to you an electronic copy of the Site (including all content on the Site). We shall provide such assistance as you reasonably request in transferring the hosting of the Site to another service provider, subject to the payment of our expenses calculated on a time and materials basis at our standard rates, and payable upon demand.

14. DATA PROTECTION

14.1 We warrant that, to the extent we process any personal data as a data processor on your behalf: (a) we shall act only on your instructions; and (b) we have 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.

14.2 You undertake that you have obtained all necessary consents to supply the Materials to us for use in accordance with the terms of the Agreement, and that you will at all times comply with the Data Protection Act 1998.

15. GENERAL

15.1 Confidentiality: The provisions of this Clause 14.1 of the General Terms shall not apply to any information which is divulged by you (including your agents or employees) where you are required to do so by the provider of a store for downloading of any App strictly to gain access to, or facilitate the uploading of the App to a Download Platform.

15.2 Conflict: In the event of any conflict or inconsistency between the constituent parts of this Agreement, they shall prevail in the following order: (a) the Order Form, (b) the Project Plan, (c) the Proposal (d) these Specific Terms, and (e) the General Terms.

15.3 Survival: Without prejudice to the generality of clause 14.8 of the General Terms, the terms of Clauses 1, 2, 3.3, 3.4, 3.6, 4.4, 6.1, 6.2, 6.6, 6.7, 8.5, 8.6, 9.3, 14.2 shall survive expiry, variation or termination of the Agreement.