



Terms of Business

Smart Data Studio Ltd. Eagle Tower, Montpellier Drive, Cheltenham,
Gloucestershire GL50 1TA

14 June 2004

1. Effect of Terms

These Terms of business apply to the business arrangements between Smart Data Studio Ltd (“the Company”), and xxxxxxxx (“the Client”) as regards the Client appointing the Company to provide services associated with database integration and other services connected with web and data technology (“the Product”). The Product shall comply with the latest proposal supplied by the Company to the Client (attached).

2. Expenses

In addition to the charges set out in the Company’s proposal, the Company will charge to the Client reasonable expenses related to new materials and services supplied outside of the scope of the proposal in relation to the production and design of the Product, and any updating and support relating to the Product after installation which also lies outside the scope of the proposal. This work will be quoted for before any implementation takes place.

3. Payment

(a) All invoices rendered to the Client by the Company shall be paid in full within 30 days after the date of invoice or before annual renewal date.

(b) The Company may charge the Client interest at 2% above [National Westminster Bank plc] base rate for the time being on the amount of any invoice which is not paid by the Client by the due date.

(c) If the Client fails to pay the Company any invoice by the due date, save where the terms of the invoice are in dispute, then the Company shall issue notice to the Client that it is in default of said payment and shall be given a further 5 days to pay. If payment has not been made following this further period then the Company may if it thinks fit terminate this Agreement under the terms of clause 15.

4. Ownership of materials

Any materials supplied to the Company by or on behalf of the Client shall at all times when in the possession or under the control of the Company or any person to whom such materials are delivered by the Company be at the risk of the Client. The Company will not be required to recover any materials from any third party. The Company shall take all reasonable care of any materials supplied by the Client to the Company and shall return said materials when requested to do so by the Client provided accounts have been paid in full.

5. Copyright

(a) The Company alone will own the copyright and/or all other rights for the duration throughout the world for the full term of copyright in all material produced by or for the Company or to its order prior to the commencement of work by the Company on The Product (“the Company materials”), and the Company hereby grants to the Client a non-exclusive licence with no time limit to reproduce the

Product on its web site incorporating the Company Materials as the Company inserts in the Product. The Product is deemed to be the complete solution by itself.

(b) The Client will own the copyright and all other rights for their duration in all materials supplied to the Company and included in the Product but subject to any right or lien by any third party including the right of Smart Data Studio to lien of materials and code on unpaid accounts.

(c) All rights in materials produced by the Company after the date of this agreement pursuant to its obligations under this agreement ("New Materials") will be retained by the Company until it has been paid in full for all amounts due under the Agreement at which point it will grant to the Client a non-exclusive licence to use the New Material within the Product subject to any rights retained by the Company in accordance with clause 6a above and clause 7 below.

6. Third Party Rights

(a) The Client warrants that it has obtained for the Company all relevant rights in Client Materials supplied by or for the Client to the Company and/or for the Product and the Client hereby agrees to fully indemnify the Company for any claims against the Company in respect thereof.

(b) Insofar as a third party has any rights in any material incorporated in New Material, the Company will notify the Client and indicate the basis on which such third party will licence such rights and such material for inclusion in the Product. If the Client does not agree to these terms, such material will not be included in the Product. If the Client agrees to such terms the Client will be responsible for all payments to third parties in respect of such materials and warrants that it will comply with all licence agreements (if any) and the Client hereby agrees to full indemnify the Company for any claims against the Company in the respect thereof.

(c) The Company agrees to protect and save harmless and defend at its own expense the Client from and against any and all claims for infringements of patents trademarks industrial designs copyrights or other property rights affecting the software provided that:

1) The Client shall not have done or permitted or suffered to be done anything which may have been or become an infringement of these rights; and

2) The Client shall have exercised a reasonable standard of care in protecting the same; failing which the Client shall indemnify the Company against all actions and costs incurred in respect thereof.

(d) The Client undertakes that the Company shall be given prompt notice of any claim described in sub-clause 7(c) above that is made against the Client and the Company shall have the right to defend any such claims and make settlements thereof at its own discretion and the Client shall give such assistance as the Company may reasonably require to settle or oppose any such claims.

(e) In the event any such infringement occurs or may occur the Company may at its sole option and expense and by way of discharge of its obligations hereunder and subject to payment of all costs and expenses to date:

1) procure for the Client the right to continue using the software or infringing part thereof; or

2) modify or amend the software to a similar capability so that it becomes non-infringing; or

3) replace the software or infringing part with software of similar capability.

7. "Look and Feel"

The Company reserves all rights in the "look and feel" of the Product and nothing shall prevent the Company from designing products for third parties other than the Client, which have a similar "look and feel" or concept or design as the Product designed for the Client.

8. Publicity

The Client agrees that the Company can show, copy or use the Product and refer to the Client in order to promote the Company and for the Company's general publicity.

9. Alterations after Commencement of Specification

The Company shall be entitled to charge full fees and expenses at its normal rates relating to the Product which is curtailed or altered at the Client's request or is beyond the scope of the specification other than to ensure that the Product satisfies the requirements contained in the proposal. These fees will include (without limitation) the full amount of any fee agreed in advance for such a project. All alterations will be quoted for before additional work is carried out on behalf of the Client.

10. Confidentiality

Each party in the Contract hereto undertakes to the other that it will treat and procure that its directors, employees, agents or servants shall keep in strict confidence any information or data of the other,

which is disclosed or otherwise comes into its possession directly or indirectly as a result of the provision of Service under the terms and conditions of this Contract. Neither party shall disclose information to any person other than its directors, employees, agents or servants who are directly or indirectly concerned in the execution of this Contract and shall have a proper need for such information. These obligations shall remain in full force and effect notwithstanding any termination of this Contract.

11. Warranties and Indemnities

The Client undertakes to the Company that no materials or information supplied by the Client will if published or distributed (electronically or otherwise) by or at the request of the Company be defamatory or in breach of any intellectual property or other right of any third party or be offensive, unlawful, or cause any harm to any person.

12. Extent of Company's liability

The Company warrants that the Product meets the requirements described in the documents contained in the proposal.

13. Force Majeure

If either party shall be prevented from performing any obligations to the other party under this Agreement by circumstances outside the reasonable control of the party concerned then that party shall at its own option treat itself as wholly or partly released from all obligations.

14. Rights of Company on Breach of Contract by Client

If the Client is at any time in material breach of any obligation to the Company (including non-payment or late payment of sums due to the Company under the terms of clause 3(c)), the Company may if it thinks fit terminate by notice to the Client all its obligations to the Client and may cancel any commitments made on behalf of the Client. In the event of such a cancellation the Client will become liable to pay to the Company on demand such sums as the Company may specify relating to instructions given by the Client before termination so as to indemnify it in relation to liabilities incurred and remunerate it as if all instructions given by the Client had been performed in full.

15. Rights of Client on Breach of Contract by Company

If the Company is at any time in material breach of any obligation to the Client the Client may if it thinks fit terminate by notice to the Company all its obligations to the Company and may cancel any commitments made on behalf of the Company. In the event of such a cancellation the Company will become liable to pay to the Client on demand such sums related to work not carried out for payment already received.

16. Right to Sub-contract

(a) The Company may sub-contract all or any part of its obligations to the Client. The Company shall keep the Client informed of any such developments at all times.

(b) In the event that the Company sub-contracts any part of its obligations to the Client then the Company shall be liable for the quality and delivery of the goods and services concerned and of the technical and professional ability of the sub-contractor to carry out said obligations

17. Approval

Any approval or acceptance which is required to be given to the Company by the Client under the Agreement (or otherwise) shall not be unreasonably withheld or delayed. Failure to disapprove within 5 working days will be considered approval on behalf of the Client. Acceptance shall not be withheld in any event, if the Product has been produced by the Company in accordance with the Specification.

18. Notices

(a) Any written notice or other communication required to be in writing under these terms may be sent by recorded delivery or fax and in the case of a notice by the Company may be addressed to the Client at its last known or usual address and in the case of a notice by the Client may be addressed to the Company at the above address.

(b) Any such notice sent by post shall be deemed to have been duly served in the ordinary course of post and in proving service it shall be sufficient to prove that the envelope containing the notice was properly addressed, prepaid and posted. Any notice sent by fax shall be deemed delivered on the business day following the day the fax was sent.

19. Governing Law

The contract shall in every respect be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

20. Delivery of Product

The Company warrants that it will have carried out stringent tests of software before it is delivered to the Client, but does not warrant that the software is completely error or bug free.

21. Initial Arbitration

Should any material disputes arise during the course of this contract, they should initially be voiced verbally between the most senior executive director of Smart Data Studio who has not been involved with the routine specification and production of the web site required under this contract - named for the time being as David Hobson - and his counterpart at the Client's company.