

# STATIC GAMES LIMITED

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## STANDARD TERMS AND CONDITIONS

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### **BACKGROUND:**

These Terms and Conditions shall apply to the provision of IT design and development services by **STATIC GAMES LTD** (the “Company”) to customers that require its services.

### **I. Definitions and Interpretation**

I.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Acceptance Date” means the date on which the Product is accepted (or deemed to be accepted) by the Customer pursuant to Clause 6.3 or Clause 6.5;

“Acceptance Tests” means the tests referred to in Clause 6;

“Additional Services” means any services requested by the Customer to be provided by the Company in addition to those set out in the Specification;

“Agreement” means the contract into which the Parties will enter which shall be evidenced by the signatures for and on behalf of both Parties on the IT Services Contract in the form appended to these Terms and Conditions;

“Business Day” means, any day (other than Saturday or Sunday) on which ordinary banks are open for normal business in London;

“Confidential Information” means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

“Customer” means the party identified as the customer in the IT Services Contract;

“Documentation” means the documentation to be delivered by the Company as part of the Project and containing guidance and instructions on the operation and use of the Product;

“Intellectual Property Rights” means:

- (a) any and all rights in any patents, trade marks, service marks, registered designs, Products (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions;
- (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);
- (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and
- (d) the right to sue for past infringements of any of the foregoing rights;

“IT Services Contract” means the document in letter form issued by the Company and to be counter-signed by the Customer in the form appended to these Terms and Conditions;

“Payment Schedule” means the payment schedule set out in Part 1 of Schedule 2 to the IT Services Contract;

“Price” means the price for the provision of the Product, the Licence and the Documentation;

“Product” means the code and programming in the application, program, software and/or website being developed by the Company specifically for the Customer, preliminary details of which are set out in the Specification, including any enhancements and modifications made;

“Project” means, collectively, the development, delivery and testing of the Product;

“Rates” means the rates set out in Part 2 of Schedule 2 to the IT Services

Contract;

“Services” means the IT development, procurement, consulting and computer programming services required to produce the Product;

“Specification” means the specification of the Product set out in Schedule I to the IT Services Contract; and

“Warranty Period” means the period of [3] months after the Acceptance Date.

- 1.2 Unless the context otherwise requires, each reference in the Agreement to:
  - 1.2.1 “writing”, and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means; and
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of the Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to persons shall include corporations.

## **2. The Project**

- 2.1 The Company shall:
  - 2.1.1 provide the Customer with the Services for the purpose of creating the Product as detailed in the Specification;
  - 2.1.2 provide the Documentation; and
  - 2.1.3 carry out any Additional Services as agreed by the Parties.
- 2.2 The Company shall carry out the obligations set out in Clause 2.1 in accordance with a programme for implementation agreed between the Parties or, in absence of such programme, within a reasonable time.
- 2.3 Where the Customer requires the Company to provide training, support and maintenance or any further changes or updates in relation to the Product, both Parties shall enter into a separate support agreement, the terms of which shall be agreed between the Parties.

### **3. Personnel**

The Company shall ensure that all of its personnel engaged in the Project have the necessary skills, expertise and diligence to undertake such work and will conform to the professional standards generally observed in the software development industry for similar services.

### **4. Customer's Obligations**

The Customer shall:

- 4.1 ensure that the IT equipment it uses in conjunction with the Product is serviceable, reasonably up to date and fit for purpose to host the Product as necessary to enable the Company to carry out its obligations under the Agreement;
- 4.2 ensure that its representatives, employees and other independent contractors are available co-operate reasonably with the Company and its employees and sub-contractors in carrying out the Project; and
- 4.3 promptly furnish the Company with such information and documents as it may reasonably request for the proper performance of its obligations under the Agreement.

### **5. Change Requests**

- 5.1 If the Customer identifies a requirement for a change to the original Specification, it will notify the Company in writing, detailing the change requirements.
- 5.2 The receipt of the notification of the change by the Company will constitute a request to the Company to state in writing the effect such a change will have on the Price and on the programme for the delivery of the Product.
- 5.3 The Company shall use all reasonable endeavours to supply the necessary details within five (5) Business Days (or such other period as may be agreed) from receipt of the notification.
- 5.4 The Customer shall respond as soon as reasonably practicable with its agreement or otherwise to progress with the change as requested. The Company shall not implement any changes unless agreed to by the Customer.

## **6. Acceptance Tests**

- 6.1 The nature and scale of the Acceptance Tests shall be as agreed by the Parties.
- 6.2 The Company shall use its reasonable endeavours to ensure that the Product is ready for acceptance testing by the date that the Parties have agreed in advance. In any event, the Company shall give the Customer 5 (five) Business Days' prior notice in writing of the date when it will be ready to commence the Acceptance Tests. Unless otherwise agreed, the Acceptance Tests shall take place on the sixth Business Day after such notice has been given.
- 6.3 The Customer shall accept the Product immediately after the Product has passed the Acceptance Tests.
- 6.4 If the Product fails to pass the Acceptance Tests, the Company will make such modifications to the Product as reasonably necessary in order to pass the Acceptance Tests within a reasonable period of time.
- 6.5 If at any time the Customer shall commence live running of the whole or any part of the Product (other than in the Acceptance Tests), then the Customer shall be deemed to have accepted the Product.
- 6.6 If the Product has not been accepted by the Customer on or after the occurrence of the events specified in Clause 6.4, then the Customer shall be entitled, without prejudice to any other rights or remedies it may have under the Agreement or at law, to terminate the Agreement immediately by written notice upon the Company, whereupon Clause 18 shall apply.

## **7. Representatives and Progress Meetings**

- 7.1 Each Party shall nominate in writing upon the signing of the Agreement, the person who will act as its representative for the purposes of the Agreement. Representatives will be responsible for providing any information which may be required by the other Party to perform its obligations under the Agreement.
- 7.2 The Parties shall procure that their respective representatives will meet at least weekly between the date of the Agreement and the planned Acceptance Date to discuss and minute the progress of the Project.

## **8. Warranties**

8.1 The Company warrants that:

8.1.1 the Product shall perform substantially in accordance with the Specification, minor errors excluded;

8.1.2 the Documentation will provide users with adequate instructions to enable them effectively to operate and use the Product; and

8.1.3 the development of the Product will be carried out in a professional manner conforming to best industry practices.

8.2 The Company shall not be liable and shall have no obligations under this Clause 8 if a failure to meet the warranties set out in it is caused by:

8.2.1 software other than the Product running on the Customer's IT equipment or such equipment not being fit for purpose; or

8.2.2 modifications or customisation made by or on behalf of the Customer to the Product, without the authorisation and approval of the Company.

8.3 If the Company receives a written notice from the Customer identifying a breach of the warranties set out in Clause 8.1, then the Company shall, at its own expense, promptly remedy such breach or failure. The Company shall have no liability or obligations under the warranties unless it shall have received written notice of the defect or error within the Warranty Period.

## **9. Undertakings**

9.1 The Company shall:

9.1.1 observe any reasonable directions as may from time to time be reasonably given to the Company by the Customer for the purposes of the Agreement;

9.1.2 not incur unauthorised expenditure or costs on behalf of the Customer without the Customer's prior written consent unless such is unavoidable;

9.1.3 ensure that it and its servants, agents and sub-contractors take all reasonable precautions to ensure that no known viruses or other malware for which detection and antidote software is generally available are coded or introduced into the

Product.

- 9.2 If the Company wishes to use material (in any medium) owned by third parties as part of the Product, it shall (having first obtained the Customer's prior written agreement), obtain from those third parties such written assignments, releases, waivers, permissions and licences as necessary to permit such use and to enable the Customer to exploit any program containing that material in the Product in all present and future media. The Company shall deliver copies of any documentation relevant to third party clearances to the Customer upon request.

## **10. Intellectual Property Rights**

- 10.1 Those parts of the Product specifically developed or written for the Customer under the Agreement including the source code and the Intellectual Property Rights therein shall belong to and vest in the Customer once the Customer has paid the Price in full.
- 10.2 All other parts of the Product and all elements that form part of the generic functionality of the Product and the source codes relating to them shall remain vested in the Company, and on payment in full of the Price, the Company grants to the Customer a non-exclusive, perpetual, non-transferrable right to use those parts of the Product and the Documentation on any processor owned or controlled by the Customer.
- 10.3 The Agreement will not pass to the Customer any rights that are greater than those held or obtained by the Company during the carrying out of the Project.
- 10.4 The Company will indemnify the Customer on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use or possession of the Product infringes the Intellectual Property Rights of any third party subject to the following conditions:
- 10.4.1 the Customer shall promptly notify the Company in writing of any allegations of infringement of which it is aware and shall not make any admissions without the Company's prior written consent;
- 10.4.2 the Customer, at the Company's request and expense, shall allow the Company to conduct and/or settle all negotiations and litigation resulting from any such claim subject to the Company taking over such conduct within 20 Business Days after

being notified of the claim and provided that the Company diligently pursues the settlement of any such claim; and

- 10.4.3 the Customer shall, at the request of the Company, afford all reasonable assistance with such negotiations or litigation, and shall be reimbursed by the Company on demand for all expenses incurred in doing so.
- 10.5 If the Customer's use or possession of the Product or any part of the Product in accordance with the Agreement, is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights, then the Company shall promptly and at its own expense:
  - 10.5.1 procure for the Customer the right to continue using and possessing the Product or the infringing part; or
  - 10.5.2 modify or replace the Product (or part thereof) without detracting from the overall performance of the Product, so as to avoid the infringement.
- 10.6 If the remedies set out in Clause 10.5 above are not in the Company's opinion reasonably available, then the Customer shall return the Product which is the subject of the intellectual property claim, and the Company shall refund to the Customer the corresponding portion of the Price, as normally depreciated, whereupon the Agreement shall immediately terminate.

## **11. Charges and Expenses**

- 11.1 In consideration of the Company carrying out the Project, the Customer shall pay to the Company the Price which shall be invoiced to the Customer in the specified proportions set out in Part 1 of Schedule 2 to the IT Services Contract and subject to the terms set out in Clause 12.
- 11.2 In consideration of any Additional Services, the Customer shall pay to the Company the amounts invoiced by the Company to the Customer based on the Rates set out in Part 2 of Schedule 2 to the IT Services Contract.
- 11.3 The Customer shall also pay or procure the payment to the Company of all reasonable travelling and other out-of-pocket expenses incurred in the course of the Project subject to the Customer having first agreed to the reimbursement of the expenses in question.

## **12. Terms of Payment**

- 12.1 Payment of sums due by the Customer to the Company shall be made within 28 days of the receipt of an invoice from the Company. All payments under the Agreement shall be made in pounds Sterling.
- 12.2 With effect from the beginning of each year commencing on the Acceptance Date, the Company may increase the Rates in effect during the previous year provided that not less than 20 Business Days' prior written notice has been given to the Customer by the Company.
- 12.3 All payments under the Agreement are exclusive of VAT, which shall be payable by the Customer at the rate and in the same manner for the time being prescribed by law against submission of a valid tax invoice.
- 12.4 Any sums owing by the Customer which remain unpaid following the expiry of the time period set out in Clause 12.1 shall incur interest and collection fees at the rate and of the amount respectively as permitted in the Late Payment of Commercial Debts (Interest) Act 1998.

## **13. Liability and Insurance**

- 13.1 The Company shall, during the term of the Agreement, maintain with an insurance company of repute employer's liability, third party liability, product liability and professional negligence insurance cover in respect of its liabilities arising out of or connected with the Agreement. The Company shall on request supply copies of the relevant certificates of insurance to the Customer as evidence that such policies remain in force.
- 13.2 The Company shall indemnify the Customer for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under the Agreement.
- 13.3 Save in respect of claims for death or personal injury arising from the Company's negligence, in no event will the Company be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of the Company

whether such damages were reasonably foreseeable or actually foreseen.

- 13.4 Except as provided above in the case of personal injury and death, the Company's maximum liability to the Customer under the Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the greater of:
- 13.4.1 the sum for which the Company carries comprehensive insurance cover pursuant to Clause 13.1 above; or
- 13.4.2 a sum equivalent to the price paid to the Company for the products or services that are the subject of the Customer's claim.
- 13.5 The Parties acknowledge and agree that the limitations contained in this Clause 13 are reasonable in the light of all the circumstances.
- 13.6 The Customer's statutory rights as a consumer (where the Customer is a consumer and not acting in the course of business) are not affected. All liability that is not expressly assumed in the Agreement is excluded. These limitations will apply regardless of the form of action, whether under statute, in contract or tort including negligence or any other form of action. Nothing in the Agreement shall exclude or limit liability for fraudulent misrepresentation.

#### **14. Data Protection**

The Parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation insofar as the same relates to the provisions and obligations of the Agreement.

#### **15. Confidentiality**

- 15.1 Each Party undertakes that, except as provided by Clause 15.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for five (5) years after its termination:
- 15.1.1 keep confidential all Confidential Information;
- 15.1.2 not disclose any Confidential Information to any other party;
- 15.1.3 not use any Confidential Information for any purpose other than as contemplated by

and subject to the terms of the Agreement;

15.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

15.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of Clauses 15.1.1 to 15.1.4 above.

15.2 Either Party may:

15.2.1 disclose any Confidential Information to:

15.2.1.1 any sub-contractor or supplier of that Party;

15.2.1.2 any governmental or other authority or regulatory body; or

15.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies,

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law;

15.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

15.3 The provisions of this Clause 15 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## **16. Force Majeure**

16.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

16.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of 6 months, the

other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all work on the Project completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

## **17. Term and Termination**

- 17.1 The Agreement shall come into force and the Services and Project shall commence on the date stated in the IT Services Contract and shall continue until the completion of the Project, subject to the provisions of this Clause 17 and other relevant Clauses of the Agreement.
- 17.2 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 17.2.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 20 Business Days of the due date for payment;
  - 17.2.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 17.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
  - 17.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
  - 17.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
  - 17.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party; or

- 17.2.7 that other Party ceases, or threatens to cease, to carry on business.
- 17.3 For the purposes of Clause 17.2.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 17.4 The rights to terminate the Agreement given by this Clause 17 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## **18. Effects of Termination**

Upon the termination of the Agreement for any reason:

- 18.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 18.2 the Company shall immediately return to the Customer all materials and documentation and any Confidential Information belonging to the Customer and all copies of the whole or any part thereof or, if requested by the Customer, shall destroy the same and certify in writing to the Customer that it has been destroyed;
- 18.3 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 18.4 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 18.5 subject as provided in this Clause 18 and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 18.6 each Party shall (except to the extent referred to in Clause 15 immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

## **19. No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either

Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**20. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

**21. Set-Off**

Either Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

**22. Assignment and Sub-Contracting**

22.1 The Customer shall not be permitted to assign to any third party its rights under the Agreement.

22.2 The Company shall be entitled to assign its rights under the Agreement to a third party and to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Party in question.

**23. Time**

The Parties agree that all times and dates referred to in the Agreement shall not be of the essence of the Agreement.

**24. Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

**25. Non-Solicitation**

25.1 The Customer shall, for the term of the Agreement and for a period of 12 months after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the Company at any time in relation to

the Agreement.

- 25.2 Neither Party shall, for the term of the Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

## **26. Third Party Rights**

No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

## **27. Notices**

- 27.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 27.2 Notices shall be deemed to have been duly given:
- 27.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 27.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 27.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 27.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid
- 27.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **28. Entire Agreement**

- 28.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 28.2 Each Party acknowledges that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or

common law are excluded to the fullest extent permitted by law.

## **29. Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **30. Severance**

In the event that one or more of the provisions of the Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement. The remainder of the Agreement shall be valid and enforceable.

## **31. Dispute Resolution**

31.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

31.2 If negotiations under Clause 31.1 do not resolve the matter within 28 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through a commercial mediation procedure under the guidelines and procedures laid down by a mediator to be agreed by the parties, failing which a mediator shall be appointed by the President of the Law Society.

31.3 Nothing in this Clause 31 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief or prevent the Company from taking appropriate legal or court action to pursue the payment of unpaid sums from the Customer.

## **32. Law and Jurisdiction**

32.1 The Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

32.2 Subject to the provisions of Clause 31 any dispute, controversy, proceedings or

claim between the Parties relating to the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.