

Noldor Terms and Conditions

PARTIES

Refer to attached proposal.

AGREEMENT

1. Definitions

1.1 In these Terms and Conditions, except to the extent expressly provided otherwise:

"Terms and conditions" means this document including any Schedules, and any amendments to these Terms and Conditions from time to time;

"Assignment IP" means all Intellectual Property Rights in the Software and the Documentation, excluding the Intellectual Property Rights in the Third Party Materials;

"Business Day" means any weekday other than a bank or public holiday in South Africa;

"Business Hours" means the hours of 08:00 to 17:00 GMT+2 on a Business Day;

"Charges" means the following amounts:

- (a) the amounts specified in the Proposal;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Developer's [standard time-based charging rates as notified by the Developer to the Customer by the time spent by the Developer's personnel performing the Services (rounded down by the Developer to the nearest quarter hour);

"Development Services" means the design and development of the Software by Noldor;

"Documentation" means the documentation for the Software produced by the Developer and delivered or made available by the Developer to the Customer;

"Effective Date" means the date of acceptance of the Proposal;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks,

virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Proposal" means any proposal document submitted to the Customer which includes the scope of work and the charges for Noldor to provide such work to the Customer;

"Services" means any services that Noldor provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"Software" means the software identified in the Proposal, including the Source Code of that software created by or on behalf of the Developer in the course of the provision of the Development Services and compiled to create the executable version of that software;

"Software Defect" means a defect, error or bug in the Software having an adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Software;
- (b) any use of the Software contrary to the Documentation by the Customer or any person authorised by the Customer to use the Software;
- (c) a failure of the Customer to perform or observe any of its obligations in these Terms and Conditions; and/or
- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"Software Specification" means the specification for the Software set out in the Proposal and in the Documentation, as it may be varied by the written agreement of the parties from time to time;

"Source Code" means software code in human-readable form, including human-readable code compiled to create software or decompiled from software, but excluding interpreted code;

"Term" means the term of the terms and conditions, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2; and

"Third Party Materials" means the works and/or materials comprised in the Software, the Intellectual Property Rights in which are owned by a third party[, and which are specified in Paragraph 2 of Schedule 1 (Software Development Particulars) or which the parties agree in writing shall be incorporated into the Software].

Intent

The terms and conditions contained herein apply to all software development services provided at present or proposed to a prospective customer.

3. Term

3.1 The Terms and Conditions shall come into force upon the Effective Date.

3.2 The Terms and Conditions shall continue in force indefinitely OR until:

- (a) all the Services have been completed;
- (b) all the Software has been delivered; and
- (c) all the Charges have been paid in cleared funds,

upon which it will terminate automatically, subject to termination in accordance with Clause 13.

4. Development Services

4.1 The Developer shall provide the Development Services to the Customer.

4.2 The Developer shall use reasonable endeavours to ensure that the Development Services are provided in accordance with the timetable set out in the proposal, and that a copy of the Software and Documentation produced will be shared with the Customer in accordance with the proposal.

4.3 The Customer acknowledges that a delay in the Customer performing its obligations under these Terms and Conditions may result in a delay in the performance of the Development Services; and subject to Clause 11.1 the Developer will not be liable to the Customer in respect of any failure to meet the Development Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.

4.5 The Developer shall keep the Customer reasonably informed of the progress of the Development Services and, in particular, shall inform the Customer of any substantial obstacles or likely delays in the performance of the Development Services.

4.6 The Developer shall, during the course of the Development Services at the request of the Customer, make accessible to the Customer a current development version of the Software for the purposes of enabling the Customer to assess the progress of the Development Services and provide feedback to the Developer regarding the Software.

5. Assignment

5.1 On and from [the date of delivery of the Software to the Customer], the Developer hereby assigns to the Customer all of its right, title and interest in the Assignment IP.

5.2 The assignment in Clause 5.1 is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals.

5.3 The assignment in Clause 5.1 includes the right to bring proceedings in respect of past infringements of the assigned rights, and to recover damages or benefit from any other remedies in respect of any past infringements of the assigned rights.

6. Third Party Materials

6.1 Subject to any express written agreement between the parties, the Developer shall ensure that the Third Party Materials are:

(a) licensed to the Customer in accordance with the relevant licensor's standard licensing terms (which the Customer acknowledges may be open source or *Creative Commons* licensing terms);

(b) licensed to the Customer on reasonable terms notified by the Developer to the Customer;

(c) sub-licensed by the Developer to the Customer on reasonable terms notified in writing by the Developer to the Customer; or

(d) sub-licensed by the Developer to the Customer on the basis of a non-exclusive, worldwide, perpetual and irrevocable licence to use the Third Party Materials in connection with the Software.

7. Customer obligations

7.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Developer, or procure for the Developer, such:

- (a) co-operation, support and advice; and
- (b) information and documentation,

as are reasonably necessary to enable the Developer to perform its obligations under these Terms and Conditions.

8. Charges

8.1 The Customer shall pay the Charges to the Developer in accordance with the proposal that has been signed.

8.2 If the Charges are based in whole or part upon the time spent by the Developer performing the Services, the Developer must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Developer any Charges in respect of Services performed in breach of this Clause 8.2.

8.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated [inclusive of any applicable value added taxes] OR [exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Developer].

9. Payments

9.1 The Developer shall issue invoices for the Charges to the Customer on or after the invoicing dates and conditions set out in the Proposal.

9.2 The Customer must pay the Charges to the Developer within the period of [14 days] following the issue of an invoice in accordance with this Clause 9.

9.3 The Customer must pay the Charges by bank transfer (Electronic Fund Transfer) using such payment details as are notified by the Developer in the Proposal. The Customer must bear any fees charged for processing payments to Noldor such that the final amount received by Noldor is the same as what was invoiced.

9.4 If the Customer does not pay any amount properly due to the Developer under these Terms and Conditions, the Developer may:

- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month)

10. Warranties

10.1 The Developer warrants to the Customer that:

- (a) the Developer has the legal right and authority to enter into these Terms and Conditions and to perform its obligations under these Terms and Conditions;
- (b) the Developer will comply with all applicable legal and regulatory requirements applying to the exercise of the Developer's rights and the fulfilment of the Developer's obligations under these Terms and Conditions; and
- (c) the Developer has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

10.2 The Developer warrants to the Customer that:

- (a) the Software as provided will conform in all [material] respects with the Software Specification;
- (b) the Software will be supplied free from Software Defects and will remain free from Software Defects for a period of at least 6 months following the supply of the Software;
- (c) the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
- (d) the Software shall incorporate security features reflecting the requirements of good industry practice.

10.3 The Developer warrants to the Customer that the Software and Documentation, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under South African law.

10.4 The Developer warrants to the Customer that the Software and Documentation, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

10.5 If the Developer reasonably determines, or any third party alleges, that the use of the Software by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Developer may acting reasonably at its own cost and expense:

- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification

must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or

(b) procure for the Customer the right to use the Software in accordance with these Terms and Conditions.

10.6 The Customer warrants to the Developer that it has the legal right and authority to enter into these Terms and Conditions and to perform its obligations under these Terms and Conditions.

10.7 All of the parties' warranties and representations in respect of the subject matter of these Terms and Conditions are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of these Terms and Conditions will be implied into these Terms and Conditions or any related contract.

Communication

The Customer must communicate requirements exclusively using an agreed Project Management tool such as Jira or Trello. Any other forms of communication must be sent following this order of precedence:

- (a) Email
- (b) Text: WhatsApp or Slack. WhatsApp communication is only allowed if Noldor developers consent to it. If Slack is chosen then the Customer must invite all Noldor personnel involved in servicing the Customer to their team. Noldor personnel will snooze notifications outside of working hours.

11. Limitations and exclusions of liability

11.1 Nothing in these Terms and Conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law.

11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in these Terms and Conditions:

- (a) are subject to Clause 11.1; and

(b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

11.3 The Developer shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.

11.4 The Developer shall not be liable to the Customer in respect of any loss of profits or anticipated savings.

11.5 The Developer shall not be liable to the Customer in respect of any loss of revenue or income.

11.6 The Developer shall not be liable to the Customer in respect of any loss of use or production.

11.7 The Developer shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.

11.8 The Developer shall not be liable to the Customer in respect of any loss or corruption of any data or database.

11.9 The Developer shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

12. Force Majeure Event

12.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under these Terms and Conditions (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

12.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under these Terms and Conditions, must:

(a) promptly notify the other; and

(b) inform the other of the period for which it is estimated that such failure or delay will continue.

12.3 A party whose performance of its obligations under these Terms and Conditions is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

13. Termination

13.1 The Developer may terminate these Terms and Conditions by giving to the Customer not less than 30 days' written notice of termination.

13.2 The Customer may terminate these Terms and Conditions by giving to the Developer not less than 30 days' written notice of termination.

13.3 Either party may terminate these Terms and Conditions immediately by giving written notice of termination to the other party if:

- (a) the other party commits any breach of these Terms and Conditions, and the breach is not remediable;
- (b) the other party commits a breach of these Terms and Conditions, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches these Terms and Conditions (irrespective of whether such breaches collectively constitute a material breach).

13.4 Either party may terminate these Terms and Conditions immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under these Terms and Conditions); or
- (d) [if that other party is an individual:

- (i) that other party dies;
- (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
- (iii) that other party is the subject of a bankruptcy petition or order.]

13.5 The Developer may terminate these Terms and Conditions immediately by giving written notice to the Customer if:

- (a) any amount due to be paid by the Customer to the Developer under these Terms and Conditions is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Developer has given to the Customer at least 14 days' written notice, following the failure to pay, of its intention to terminate these Terms and Conditions in accordance with this Clause 13.5.

14. Effects of termination

14.1 Upon the termination of these Terms and Conditions, all of the provisions of these Terms and Conditions shall cease to have effect, save that the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 9.2, 9.4, 11, 14, 15, 18 and 19.

14.2 Except to the extent that these Terms and Conditions expressly provides otherwise, the termination of these Terms and Conditions shall not affect the accrued rights of either party.

14.3 Within [30 days] following the termination of these Terms and Conditions for any reason:

- (a) the Customer must pay to the Developer any Charges in respect of Services provided to the Customer before the termination of these Terms and Conditions; and
- (b) the Developer must refund to the Customer any Charges paid by the Customer to the Developer in respect of Services that were to be provided to the Customer after the termination of these Terms and Conditions,

without prejudice to the parties' other legal rights.

15. Further assurance

15.1 The Developer must use reasonable endeavours to:

- (a) do or procure the doing of all acts; and
- (b) execute or procure the execution of all documents,

that the Customer may reasonably request from time to time in order to perfect or confirm the Customer's ownership of the rights assigned by these Terms and Conditions.

15.2 The Developer must provide to the Customer at the cost and expense of the Customer such reasonable assistance as the Customer may request in order to register the Customer's rights in the Assignment IP with any intellectual property office or registry.

15.3 The Developer must provide to the Customer at the cost and expense of the Customer all reasonable assistance in connection with any legal proceedings relating to the rights assigned under these Terms and Conditions that are brought by, or against, the Customer.

16. Notices

16.1 Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in Clause 16.2):

- (a) sent by email to the designated contact person at Noldor, in which case the notice shall be deemed to be received upon delivery; or

providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

16.2 The parties' contact details for notices under this Clause 16 will be documented in the Proposal.

16.3 The addressee and contact details set out in Clause 16.2 may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause 16.

17. Subcontracting

17.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Developer may subcontract any of its obligations under these Terms and Conditions, providing that the Developer must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

17.2 The Developer shall remain responsible to the Customer for the performance of any subcontracted obligations.

18. General

18.1 No breach of any provision of these Terms and Conditions shall be waived except with the express written consent of the party not in breach.

18.2 If any provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of these Terms and Conditions will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

18.3 These Terms and Conditions may not be varied except by a written document signed by or on behalf of each of the parties.

18.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under these Terms and Conditions.

18.5 This Terms and Conditions is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to these Terms and Conditions are not subject to the consent of any third party.

18.6 Subject to Clause 11.1, these Terms and Conditions shall constitute the entire agreement between the parties in relation to the subject matter of these Terms and Conditions, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

18.7 These Terms and Conditions shall be governed by and construed in accordance with [South African law].

18.8 The courts of South Africa shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with these Terms and Conditions.

19. Interpretation

19.1 In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

19.2 The Clause headings do not affect the interpretation of these Terms and Conditions.

19.3 References in these Terms and Conditions to "calendar months" are to [the 12 named periods (January, February and so on) into which a year is divided].

19.4 In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

EXECUTION

The parties accept these Terms and Conditions implicitly when the Proposal is signed by the Customer.