



Independent Testing for Websites and Software



68 - 72 Queen Victoria Street London EC4N 4SJ Tel Fax 0800 612 2780

Fax **→** 02

**→** 020 7692 5517

Web ▶ www.testpartners.co.uk

## Standard Terms and Conditions

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This agreement made as of [DD MMM 2014], is entered into by and between:

**Test Partners Ltd**, a company registered in England and Wales under company number: 4253677 and whose registered office is at 1 The Green, Richmond, Surrey TW9 1PL herein after referred to as "Test Partners".

and

Individually a "Party" and together the "Parties", taking into consideration that

- (A) The Client has identified a need for expert help and assistance in the performance and completion of the Assignment.
- (B) Test Partners has the required level of expertise and has agreed to provide the required assistance on the terms of this Agreement.

Test Partners and the Client certify agreement on the following:

## 1. Interpretation

In this Agreement:

- 1.1. Intellectual Property Rights or IPR means any and all patents, patent applications, know-how, trademarks, trademark applications, trade names, registered design, copyright, database rights or other similar intellectual property rights created, developed, subsisting or used in connection with the Assignment and whether in existence at the date hereof or created in the future.
- 1.2. Deliverables means the work product developed for or delivered to the Client in accordance with the relevant Schedule of Work.
- 1.3. Schedule of Work means the written proposal or engagement letter or the schedule defining the work to be carried out by Test Partners and signed by both parties
- 1.4. Specified Service means services to be carried out by Test Partners on behalf of the Client specified in the Schedule of Work.
- 1.5. Assignment means the service defined in a Schedule of Work.
- 1.6. Man Day means a period of seven and a half (7.5) hours on a Normal Working Day.
- 1.7. A Normal Working Day means Monday to Friday excluding English public and bank holidays.
- 1.8. Daily Rate means the daily fee charged by Test Partners for carrying out the Assignment and is based on a Man Day.

# 2. The Agreement

2.1. Test Partners shall carry out the Assignment defined in the Schedule of Work subject to the terms of this Agreement.





- 2.2. Both parties accept that it may be necessary to alter or adapt the Schedule of Work and that any additional works required may not be included in the proposed fees. The parties accept that any changes or additions to the Schedule of Work or the terms of this Agreement will be valid only if agreed in writing by Test Partners and the Client.
- 2.3. Statements by Test Partners about the total work time or the total charges that may be involved in fulfilling the Assignment are supplied as estimates only and while all reasonable efforts are made to ensure their accuracy no liability will be accepted in respect thereof. Test Partners shall notify the Client in the event that the actual charges are expected to exceed the estimated charges and shall obtain the written consent of the Client prior to incurring any amount in excess of the estimate
- 2.4. Test Partners shall take all reasonable steps to comply with any timetable or other targets for progress or delivery of the whole or any agreed part of the Specified Service or the completion of the Specified Service agreed in writing between the parties.

#### 3. Fees

- 3.1. Test Partners shall submit invoices in the agreed form and at the agreed intervals to the Client as detailed in each Schedule of Work to this Agreement. The Client agrees to pay Test Partners as specified in the Schedule of Work.
- 3.2. The Client agrees to pay Test Partners' invoices in full within thirty (30) days of the date of invoice.
- 3.3. Test Partners is entitled to charge interest to the Client on any outstanding amounts at the rate of 5% over the base rate of Lloyds Bank plc to run from thirty (30) days after the date agreed for payment until receipt by Test Partners.
- 3.4. The Client shall not be liable for any out-of-pocket or other expenses except as otherwise expressly stated in an applicable Schedule of Work.

# 4. Client's responsibilities

4.1. The Client undertakes to provide Test Partners with all information, support and co-operation that may reasonably be expected for Test Partners to carry out the Assignment.

#### 5. Staff

5.1. Test Partners expects to maintain continuity of personnel over the course of the Assignment. However where substitution is necessary, Test Partners shall use its reasonable endeavours to substitute with a consultant of equivalent qualifications provided always that the Client shall have the right to veto any such substitution where in the Clients reasonable opinion it considers that the substitution does not meet the requisite professional standard needed for the proper and timely performance of the Assignment.





- 5.2. Test Partners may make holiday arrangements with the staff in accordance with their holiday entitlement or require them to attend meetings or courses from time to time. When making such arrangements, Test Partners shall take reasonable steps to minimise any disruption to the Assignment.
- 5.3. Each Party agrees that during the term of the Assignment and for six (6) months after the end of the Assignment it shall not directly or indirectly solicit with a view to offering employment or an engagement on behalf of itself or any other person or organisation any of the other Party's staff who were associated with the Assignment within the previous six (6) months without the other Party's agreement in writing.
- 5.4. If either Party engages a person who was an employee of the other during this exclusion period then a fee equivalent to six (6) month's salary for the employee will be payable to the other Party by the Party making the engagement.

#### 6. Warranties

- 6.1. Test Partners warrants to the Client that the Assignment will be provided using reasonable care and skill and, as far as reasonably possible in accordance with the Schedule of Work.
- 6.2. Where, in connection with the Assignment, Test Partners supplies any goods supplied by a third party, Test Partners does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the third party supplying the goods to Test Partners.

# 7. Limitation of liability

- 7.1. Test Partners undertakes to maintain insurance coverage of Public Liability Insurance of not less than £5 million.
- 7.2. Test Partners undertakes to maintain insurance coverage of Employer's Liability Insurance of not less than £10 million.
- 7.3. Test Partners undertakes to maintain insurance coverage of Professional Indemnity Insurance of not less than £1 million.
- 7.4. The total liability of either party whether in contract, tort, or otherwise, arising out of or in connection with this Agreement shall not exceed the lesser of a) actual damages or loss assessed by the arbitrator or any other dispute resolution mechanism adopted by the parties under this Agreement or b) the total amount paid to the Supplier for services under the applicable Work Order during the preceding twelve (12) months.
- 7.5. Neither party shall be liable for any indirect, special, incidental, consequential, or punitive damages, however caused, including, without limitation, any damages resulting from loss of use, loss of data, loss of profits or loss of business arising out of or in connection with this Agreement, or of any other obligation relating to this Agreement, whether or not it has been advised of the possibility of such damages.





7.6. Nothing in this Agreement excludes or limits either party's liability to the other party for any death or personal injury resulting from the first party's negligence or for any fraudulent acts or omissions or fraudulent misrepresentation by that party or its agents, officers, directors or employees; or any liability which cannot be otherwise excluded or limited by law.

#### 8. Duration and termination

- 8.1. This Agreement shall commence from the date agreed in each Schedule of Work and shall remain in force until the Assignment is completed as defined in the Schedule of Work unless terminated early under the terms of this Agreement or by mutual consent.
- 8.2. Either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party in the event that:
  - 8.2.1. either Party is in breach of this Agreement and fails to remedy such breach (if capable of remedy) within ten (10) days after receiving written notice from the other party;
  - 8.2.2. the other Party goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.
- 8.3. Test Partners may terminate this Agreement:
  - 8.3.1. by giving the Client thirty (30) days written notice if the Client is in default of any agreed payments under this Agreement and has failed to remedy that default within ten days of receiving a written demand from Test Partners; or
  - 8.3.2. by giving the Client thirty (30) days written notice if the Client fails to accord Test Partners the reasonable access to premises, equipment, personnel or other information required for Test Partners to carry out the Assignment Service; or
  - 8.3.3. by giving the Client thirty (30) days written notice if, in Test Partners' opinion, it is no longer appropriate for the Agreement to continue in force.
- 8.4. In the event that this Agreement is terminated before the completion of the Assignment, Test Partners shall be entitled to payment by the Client for work completed in accordance with the terms specified in the relevant schedule.
- 8.5. All Client supplied items shall remain the property of Client. Test Partners shall return them to Client upon completion of an Assignment or expiry or termination of the Agreement and/or Assignment Schedule or upon earlier reasonable request by Client. Test Partners shall keep the Client supplied items in safe custody and good condition.

## 9. Intellectual Property

- 9.1. Test Partners acknowledge that the IPR in the Assignment will vest with the
- 9.2. The Client acknowledges that the IPR brought to the Assignment by Test Partners shall remain vested with Test Partners.



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- 9.3. To the extent that Deliverables include background information and/or Intellectual Property Rights belonging to Test Partners, Test Partners hereby grants to the Client a perpetual, royalty-free licence to copy and use such information and intellectual property rights for any purpose within the Client.
- 9.4. Subject always to the provisions of the non-disclosure agreement entered into by Test Partners, Test Partners will be fully entitled to use in any way it seems fit the skills, techniques, concepts or know-how acquired, developed or used in the course of delivering the Assignment.
- 9.5. In the event that a claim for the infringement of third party Intellectual Property Rights is made or intimated against Test Partners in relation to documents or other material, data and other information or devices and processes provided to Test Partners ("Test Partners Materials") by the Client for use in the provision of the Assignment or which the Client dictated should be used by Test Partners in the provision of the Assignment, the Client shall indemnify Test Partners against any and all costs, expenses, damages or other losses suffered or payments made by Test Partners in connection with the claim and any associated judgment or settlement.

## 10. Confidentiality

- 10.1. Save with the prior written consent of the other party, neither party (the "Receiving Party") shall, during or after the termination or expiry of this Agreement, use (otherwise than for the purposes of this Agreement) or disclose directly or indirectly to any person, firm, company or third party any information relating to the Assignment, the other party (the "Disclosing Party") or its affiliated companies or their respective businesses, trade secrets, customers or suppliers or any other information of whatever nature which the Disclosing Party may deem to be and duly designate as confidential ("Confidential Information") and of which the Receiving Party has or shall hereafter become possessed.
- 10.2. The Confidential Information may only be divulged to employees or independent contractors of the parties who need to know such information and are bound by confidentiality obligations no less onerous than those contained herein.
- 10.3. The foregoing provisions of this clause shall not prevent the disclosure or use by the Receiving Party of any information which is or hereafter becomes, through no fault of the Receiving Party, public knowledge or to the extent as required by law or any recognised stock exchange or regulatory body.
- 10.4. Upon the termination of this Agreement or any Schedule of Work, or as may from time to time be requested by the Client, Test Partners shall immediately deliver up to the Client all correspondence, reports, documents, specifications, papers, information (on whatever media) and property belonging or pertaining to the Client which may be or have been as part of the Assignment in its possession or under its control.





## 11. Force Majeure

11.1. Neither party shall be liable for any delays or failure to meet its obligations under this Agreement due to any cause outside its reasonable control, which it must notify to the other party as soon as possible. If performance of the Agreement is substantially prevented for a continuous period of six (6) months then either party may terminate this Agreement by written notice.

#### 12. General

- 12.1. The terms of this Agreement represent the entire Agreement between the parties and supersede any previous representations or agreements whether recorded in writing or otherwise.
- 12.2. Save for changes to the Assignment, (which must be agreed in accordance with Clause 2.2), the terms of this Agreement including the Schedules may only be varied when the variation is recorded in writing and agreed by both parties.
- 12.3. Any notice to be given hereunder shall be delivered by hand, sent by first class post or facsimile to the address of the other party as set out in this Agreement (or such other address as may have been subsequently notified in writing) and any such notice shall be deemed to have been served, if delivered by hand, at the time of delivery, if sent by first class post, upon the expiration of forty eight (48)hours after posting and if sent by facsimile shall be deemed upon transmission to the correct number, provided such notice is confirmed within forty eight (48) hours by either delivery or posting a copy by first class post to the appropriate address.
- 12.4. Both parties agree that the terms of this Agreement are fair and reasonable in all the circumstances.
- 12.5. If there is any inconsistency between the terms of this Agreement and its Schedules, the Schedules shall take precedence.
- 12.6. It is agreed that this Agreement will be governed and construed according to the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the English Courts.

# 13. Signatures

Signed for and on behalf of XXXXXXXXX Limited	Signed for and on behalf of Test Partners Limited
Name:	Name: Ian Coe
Title:	Title: Director
Date:	Date:
Signed	Signed

