Ultranyx

General Terms and Conditions of Custom Software

1. General Terms

1.1. “We” and “Us” means Ultranyx Limited, 3 Park Square, Newport, NP20 4EL.

1.2. “You” means you the customer contracting to obtain goods or services from Us,

1.3. Where “You” means more than one person, each one of You is responsible, individually, for each of the obligations of all of You under this agreement.

1.4. We agree to supply You with the goods, software licences or services (as appropriate) set out in the quotation for the price set out on the quotation and subject to the Terms set out in it, in this Agreement and in the other documents referred to in this Agreement and the quotation (as appropriate).

2. The Agreement

2.1. These Terms and conditions (including documents specifically referred to in it) are the whole of the Terms and conditions governing the agreement between Us, unless We both agree to any amendments in writing.

2.2. You confirm that You have told Us everything You know or suspect which may make the goods or services significantly more difficult for Us to make or carry out.

2.3. You confirm that You have checked the specifications provided and that they are correct.

2.4. We cannot be held responsible for any statements We have not confirmed in writing. If the quotation contains that statement, or explicitly refers to the document containing it, then it becomes part of the contract and We will accept responsibility for it (subject to these Terms and conditions).

3. Definitions

3.1. Any rule of interpretation that is contrary to common sense does not apply to this contract. Any part of the contract in italics (*like this*) is not part of the contract, but is simply a comment.

3.2. The paragraph headings are merely a guide and are not intended to be a part of this Agreement (or any Agreement referred to in it).

4. Quotations

4.1. A quotation does not amount to a contractual offer and is an indication that We may be willing to supply at a particular price. In any event, no quotation is to be regarded as valid after 30 days of its issue. No price specified in the quotation or elsewhere includes VAT or other applicable taxes or duties unless specifically stated.

5. Amendments to Specifications and Cancellation

5.1. We may alter the specifications of the Goods, Software or Services from time to time so long as the alteration does not render the Goods, Software or Services any worse. If You request Us to alter the specification after the order has been placed We may consider doing so (at our discretion) but You are warned that this may entail an increase in the price. A variation to the specification (including the price) (as opposed to a variation to the contract) is only valid where signed by one of our authorised sales staff.

5.2. If, after You have placed an order, You wish to cancel it, We may consider doing so (at our discretion) but if We agree, this may be subject to You paying Us our anticipated loss on cancellation (including loss of reasonable profit).

6. Rights of others and Permissions

6.1. If We have agreed that We are to do anything under this agreement on your instructions, and as a result We are in breach of any rights of anyone else (or anyone else threatens Us with proceedings for breach of their rights) You agree to indemnify Us against any loss We may suffer, including legal costs, in defending or resisting the proceedings or claim, or settling the proceedings or claim on legal advice. Your obligations under this clause will remain after the rest of the agreement has terminated whatever the reason for termination.

6.2. If You come across any circumstances which may lead to a claim under clause 6.1 above, You agree to tell Us about them as soon as possible.

6.3. If, as a result of such a claim or threat, We decide that it is no longer commercially sensible to proceed with your order, We may cancel the order in accordance with the provision set out below.

7. Intellectual Property

7.1. After We receive payment in full, We grant You an irrevocable, perpetual, worldwide, royalty-free license to install, use, copy and modify the software that is created for You to supply to your clients. Licensing of software functions that may used in the software is granted on a non-exclusive basis.

7.2 You acknowledge that any material of any nature which We provide You with, either under this agreement or otherwise (for example, quotations or other pre-contractual material) may contain intellectual property which is either our property or licensed to Us (including copyright, trade marks, registered and unregistered designs and patents). Nothing in this agreement is intended as a transfer of such intellectual property unless explicitly stated in writing.

8. Sub Contracting

8.1. We may sub-contract any of the services We have agreed to provide under this contract to any third party at our discretion.

8.2. Where We have sub-contracted any services to a third party specified by You, We shall not be liable for any non-performance of that third party’s obligations, and for the purposes of this agreement, any delay or hindrance caused by or attributable to that third party shall be considered to have been caused by You.

9. Third Party Recommendations

9.1. As part of carrying out our obligations under this Agreement We may recommend or suggest that another person or company carries out some work. By making this recommendation or suggestion, We do not guarantee that work. We accept responsibility for that recommendation or suggestion only if, in all of the circumstances surrounding that recommendation or suggestion (and at the time it was made) We could not reasonably have made that recommendation or suggestion.

10. Unusual Circumstances

10.1. If circumstances arise which are largely beyond our control, and which make it no longer commercially sensible for Us to continue your order, We may cancel it on the Terms set out below:

10.2. If We decide to cancel it

10.2.1. We shall give You notice, and We shall not be responsible for any loss to You which arises because of that decision (although any other rights which You may have arising before We made that decision will still stand); and

10.2.2. You will pay Us a reasonable sum in relation to the proportion of your order which We have fulfilled.

11. Consequential Loss and Our Liability

11.1. Unless explicitly stated in the quotation in writing, We do not accept liability for consequential loss of any kind. We have priced this contract on the basis that consequential loss has been excluded: If you wish us to bear liability for consequential loss we may consider doing so but on the basis that the contract price will have to be increased to cover the increased risk, whether or not we choose to bear it through our insurance.

11.2 If We have not accepted a different level of liability as referred to in the quotation, our entire liability under this contract shall be limited to the value of the goods or services provided under it.

11.3. Nothing at all in this agreement (*which includes all documentation referred to in it)* is designed or intended to reduce or restrict our liability for the death of or personal injury to anyone caused by our negligence or the negligence of anyone for whom We are responsible *(which may include, for example, our employees, sub-contractors or agents)*

12. Payment of Price

12.1. You must pay Us the price specified in the quotation, including any VAT which may apply in accordance with the Terms and on the dates contained in it. This entails payment of 25% of the full contract cost including VAT will be due prior to the start of the project. Payment of a further 25% of the full contract cost including VAT will be paid at the beginning of month 2 from the start of the project. Payment of a further 25% of the full contract cost including VAT will be paid at the beginning of month 3 from the start of the project. All remaining payments will be paid on completion of the project.

12.2. If You fail to pay the whole or part of any sum You owe to Us (whether because of this agreement or not) by the time it comes due for payment, all sums which You owe to Us (whether because of this agreement or not) will become due for payment immediately, and We may issue court proceedings against You to recover them without giving You any further notice.

12.3. You must pay Us the whole of the amount due, and may not set off or deduct anything from this amount without our written permission.

12.4. Any sums which remain unpaid after they became due are subject to interest at a rate of 4% over the base rate of NatWest Bank plc from time to time, compounded monthly, both before and after judgement.

12.5. We may assign the benefit of any debt owed to Us by You to any third party at any time.

13. Guideline Definitions of Payment Terms

13.1. “On installation”: payment is due in full immediately upon practical completion (as defined below) of installation

13.2. If We have undercharged You the VAT that should have been due on an order, You agree to pay Us the outstanding VAT immediately. If We have overcharged You VAT, We shall refund You the amount that You have overpaid.

13.3. “Practical completion” means that software or installation has been completed to the extent that it is reasonably possible to use it for normal contemplated use, save only for any minor snagging items (which will usually be dealt with under the Terms of our warranty).

14. Time for Performance

14.1. Whenever We agree to do anything by or on a particular time, We will try to do it on or at that time, but We shall not be liable for late performance:

14.1.1. if late performance is reasonably beyond our control *(it is due, for example, to the failure of our own suppliers to perform)*; or unless You have given Us a notice allowing Us a reasonable time to perform and We have failed to do so (*in any event, clause 10 above applies)*

15. Indemnity

15.1. Where We do anything for You on your premises or premises under your control, You agree to indemnify Us and keep Us indemnified against any loss, damage claim or expense arising out of the physical injury of or death of any of our staff arising in any way from our performance of this Agreement and arising by reason of the provision of defective equipment, your failure to provide a safe system of work or otherwise by reason of any negligent act or default on your part or on the part of your servants or agents or other person on your premises.

16. Software Licensed by Third Parties

16.1. Where We supply software that is not our software, We have taken reasonable steps to ensure that it does not infringe the rights of third parties. We cannot be held responsible for any such infringement, save that if the infringement relates to the whole (as opposed to the part) of any software supplied under this agreement, We shall (at our option):

16.1.1. replace that software with non-infringing software;

16.1.2. obtain at no cost to You a valid licence to continue to use the software; or

16.1.3. refund the licence fee applicable to that software.

16.2. In any of those cases, We shall be under no further liability to You in respect of that software.

16.3. If We decide that it is not practical to obtain replacement software or a valid licence, this constitutes the “unusual circumstances” referred to in clause 10 of the General Terms.

17. Assignment

17.1. Except as is specifically referred to in this Agreement, neither of Us may assign the benefit or the obligations of any part of this Agreement without the written consent of the other.

18. Notices

18.1. Where any notice is required to be given under this Agreement (where the word “notify” is used it means “to give notice”), it shall be considered to have been validly given if in writing and sent by fax, email or prepaid first-class or airmail post to the correct fax number, email address or postal address of the relevant party as contained on the quotation or prior correspondence, or subsequently notified to the other party. Where sent by fax, the notice is deemed to have arrived immediately upon sending. If sent by email, the notice is deemed to have arrived 24 hours after it was sent (unless within those 24 hours the sender has been sent an email saying that the notice has not been delivered). If sent by post, the notice is deemed to have arrived on the third working day after the day on which it was sent (if sent to an address within the UK), the fifth working day (if sent to an address within the EEA) or on the seventh working day (anywhere else in the world) (unless in each case within that period it was returned as undelivered).

19. Confidentiality and Poaching

19.1. We may have given You, and may give You in the future, confidential information (which includes but is not limited to information relating to our products, planned products and details of our marketing, support and internal structures and similar information relating to our suppliers or related products). You agree that You will use confidential information solely for the purposes of this Agreement and for evaluating future products or services which are or may be supplied by Us, and that You shall not disclose, whether directly or indirectly, to any third party confidential information other than as required to carry out the purposes of this Agreement. Before You make any such disclosure to a third party, You must obtain from them a duly binding agreement to maintain in confidence the information to be disclosed which is at least as effective as this obligation is on You.

19.2. The clause above shall not prevent the disclosure or use by You of any information:

19.2.1. which is or hereafter, through no fault of your own or of those to whom You have entrusted it, becomes public knowledge;

19.2.2. or to the extent permitted by law.

19.3 We agree to be bound by the obligations contained in the above clauses 19.1 and 19.2 likewise in relation to any confidential information which You may give Us.

19.4 You agree not to approach or engage any of our staff (with whom You have had contact) directly or indirectly within six months the termination of any contract between You and Us.

19.5 You agree not to introduce any member of our staff to any other person with a view to them engaging that person within the timescale set out above

20. Termination on Insolvency

20.1. If, in our reasonable opinion, it appears that You will be unable to meet the payment Terms We have agreed We may terminate this agreement without notice immediately, in which case We shall no longer be under any obligation to do any work for You under it, and You shall immediately become liable to pay Us all sums which You owe Us (whether or not under this Agreement and whether or not they have become due). In addition, You will be liable to pay Us a reasonable sum representing the work We have done up to the date of termination, which shall be calculated to include the loss of anticipated profit for the whole of the contract. 20.2. For the avoidance of doubt, each of the following is a reasonable reason for termination under clause 20.1 above:

20.2.1. the presentation of a bankruptcy or winding-up petition against You;

20.2.2. the appointment of a manager, receiver or administrator over all or any part of your assets

20.2.3. the commencement of any winding-up process (other than for the purposes of reconstruction or amalgamation) 20.2.4. the entry into or proposal of any form of arrangement or composition with your creditors

20.2.5. anything analogous to the above sub-sub-clauses in any jurisdiction.

21. Law

21.1. This agreement is subject in all respects to English Law

22. Waiver

22.1. If We fail to rely on our strict legal rights under this Agreement, that shall not prevent Us from relying on those rights at any time in the future.

23. Disputes

23.1. If any dispute or grievance arises between Us out of this Agreement, before taking any further action, We each agree that it will be discussed by staff members of each of Us who are most closely involved with the running of the contract. If that does not produce a resolution, the problem will be escalated to the respective superiors of each staff member respectively, until the problem is dealt with. Only if the respective CEOs of each party cannot reach agreement on the dispute will the matter be taken to the next stage as set out below.

23.2. Should the escalation mechanism set out in 23.1 above fail to be effective, before taking any other action We each agree to submit in good faith to a mediation procedure administered by ADR Group of Bristol, or, failing that, such other similar organisation as the President for the time being of the Law Society of England and Wales shall nominate. Unless We agree otherwise, the costs of the mediation shall be borne equally by each of Us.

24. Our Liability

24.1. We shall not be liable to You for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement, the Software, any Support Software, modem or other hardware, its use, the System or other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded unless We have explicitly agreed to accept increased liability in the quotation.

24.2. Notwithstanding the generality of 10.1 above, We expressly exclude liability for consequential loss or damage which may arise in respect of the Software, any Support Software, any modem or other hardware, its use, the System or other equipment or property or for loss of profit, business, revenue, goodwill or anticipated savings unless We have explicitly agreed to accept increased liability in the quotation.