



Ryland Technology Ltd Software & Web Development Terms and Conditions

1. Definitions

- (1) Agreement: the agreement (of which this document forms a part) formed between Ryland and the Client for the provision of Services;
- (2) Applicable Rate: the hourly charge applicable to the Work in question as agreed in writing between Ryland and the Client;
- (3) Client: the other party to this agreement as identified in the Project Document;
- (4) Conditions: the terms set out in this document;
- (5) Completion: Either:
 - a. 30 days after the Delivery date; or
 - b. The date on which the Client notifies Ryland that the Project is complete, whichever is earlier;
- (6) Deficiency: where the software provided to the Client does not conform to the Project Document in a material way, other than as permitted elsewhere in this Agreement;
- (7) Delivery:
 - a. If the product is to be installed on a server provided by Ryland, Delivery takes place when Ryland has installed and setup the product and provides access to the Client for testing and/or use, unless otherwise agreed in writing;
 - b. If the product is to be installed elsewhere, Delivery is the time at which the product is provided to the Client by Ryland in electronic or other form, unless otherwise agreed in writing.
- (8) Estimate: a document prepared by Ryland and communicated to the Client which sets out Work to be carried out and indicates an estimate of the time which will be required to carry out that Work;
- (9) Order Confirmation: an acceptance by the Client of any Quote or other offer to carry out work by Ryland;
- (10) Project: the development which is the subject of an agreement between Ryland and the Client;
- (11) Project Definition & Quotation: a document prepared by Ryland and communicated to the Client containing a full Project specification and Quote or Estimate;
- (12) Project Document: the Quote, Estimate or Project Definition & Quotation as appropriate;
- (13) Project Length: the number of days from the start date to the completion date specified in the Project Document;
- (14) Quote: a document prepared by Ryland and communicated to the Client which sets out Work to be carried out and specifies a fixed cost for that Work;
- (15) Time and Materials: where the Client will be charged for the time taken to do Work at the Applicable Rate;
- (16) Ryland: Ryland Technology Ltd;
- (17) Third Party: Any person or legal entity not a party to this Agreement;
- (18) Third Party Software: Any software or code component which is the property of a Third Party;
- (19) Work: any time spent by Ryland on the Project including but not limited to on-site visits, writing specifications, general advice, consultancy project management and programming;
- (20) Writing: the term "in writing" includes by email.

2. Work

- (1) The terms of this Agreement apply to all present and future contracts entered into between the Client and Ryland;
- (2) Before commencing a piece of Work, Ryland will provide a Project Document detailing what Work is to be carried out, including a Quote or Estimate. The Client must confirm in writing its acceptance of that Project Document.
- (3) In the case of a Quote, the Client will be charged the amount specified in the Quote for the work carried out in accordance with it, regardless of the time actually taken to complete that work.
- (4) In the case of an Estimate, the Client will be charged on a Time and Materials basis for the time taken and costs incurred in carrying out the work in accordance with the Estimate, whether this is higher or lower than the estimated price.
- (5) Ryland reserves the right to amend any specification (at no additional cost to the Client) where the effect will be to maintain or enhance the overall performance of the Goods or Services;

- (6) Quotations are valid for 30 days from the date of delivery but may be varied by Ryland (by written notice) at any time prior to acceptance by the Client;
- (7) Ryland will carry out all work with reasonable care and skill;
- (8) Ryland will use its best endeavours to complete Projects in accordance with delivery dates specified but shall not be liable for any loss resulting from late delivery where the number of days by which the Project is overdue is fewer than:
 - a. Where the Project Length is 2 months or less, 50% of the Project Length;
 - b. Where the Project Length is over 2 months, 25% of the Project Length.
- (9) Any deficiencies in the product or service delivered by Ryland must be notified to Ryland in writing within 30 calendar days of delivery.
- (10) The Client shall provide to Ryland all information, products, data and facilities reasonably required by Ryland in order to perform services under this Agreement. Ryland shall under no circumstances be liable for any delay or Deficiency due to delay by or a failure of the Client to provide such information, products, data or facilities;
- (11) Should work be required on the Client's site, the Client shall provide safe working conditions for the representative(s) of Ryland.

3. Charges

- (1) Subject to clause 3(2), below, any work carried out by Ryland shall be charged at the Applicable Rate unless an alternative rate or cost is agreed in writing (for example, in a Quote);
- (2) No rate below the Applicable Rate may be agreed other than in writing by a Director of Ryland;
- (3) Subject to prior notification in writing, Ryland reserves the right to vary the Applicable Rate at any time;
- (4) Except where Work is being carried out pursuant to a Quote, any change in the Applicable Rate shall apply to the remainder of the Work carried out on any Project;
- (5) On-site visits will be charged at the Applicable Rate for the Project including travel time plus reasonable travel expenses, unless otherwise agreed in writing. Subject to prior written notification, Ryland reserves the right to vary this charge at any time;
- (6) All charges and prices quoted are subject to and exclusive of VAT at the standard rate.

4. Payment Terms

- (1) Where a Quote is entered into, 30% of the purchase price is payable before the start of the Project, 30% at the midpoint of the Project and the remaining 40% upon Completion of the Project;
- (2) All invoices are due for payment within 30 days of receipt by the Client unless otherwise agreed in writing by a Director;
- (3) Payment must be made in sterling unless otherwise agreed in writing by a Director;
- (4) Interest will be applied to any sum not paid by the due date at the rate of 2.5% per month or part thereof until the date on which payment is received;
- (5) No deduction may be made in respect of set-off or counterclaim;
- (6) Payment may be made in the following ways only:
 - a. Cash: Sterling currency tendered in person. Cash should not be sent by post or carrier; any cash sent other than in person is at the risk of the Client;
 - b. BACS: Payment may be made by bank transfer to the Ryland account specified on the relevant invoice.
 - c. Other: No other method of payment is permitted except where agreed in writing by a Director.

5. Insolvency

- (1) If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, Ryland without prejudice to any other remedy shall:
 - a. Be under no obligation to proceed further with any Work under any agreement with the Client;
 - b. Be entitled to immediate payment for all Work already carried out (whether completed or not) and materials purchased for the Client;

6. Termination

- (1) Either party may terminate this Agreement at any time upon giving 30 days written notice.
- (2) However, notwithstanding any termination of this Agreement under Clause 6(1) or otherwise:
 - a. The terms of this Agreement shall continue to apply to any Work carried out under or in relation to any contract entered into prior to the expiry of the 30 days notice;

- b. The terms of this Agreement relating to Confidentiality (Clause 10) shall continue to apply;
- c. The terms of this Agreement relating to Non-Solicitation (Clause 14) shall continue to apply.

7. Limitation of Liability

- (1) Ryland's liability in the event of any breach of contract or tortious act shall be limited to the amount paid by the Client under the relevant Agreement for the Work in question;
- (2) Ryland shall under no circumstances be liable for any loss or damage arising which is indirect or consequential in nature;
- (3) Ryland shall under no circumstances be liable for any loss or damage arising as a result of delay due to a matter outside the control of Ryland.

8. Third Party Software

- (1) Each Project Document will list any Third Party Software which Ryland will supply to the Client as part of that Project;
- (2) For each item of Third Party Software supplied, Ryland will either:
 - a. Obtain a licence on the Client's behalf for that software (the details of which will be supplied to the Client on request); or
 - b. Notify the Client that the Client must obtain a licence directly.
- (3) Any such Third Party Software is supplied subject to the Third Party's licence terms, a copy of which is available from Ryland on request. By accepting a Project Document, the Client accepts those third party licence terms.

9. Illegality

- (1) Ryland shall be under no obligation to print, reproduce or publish (or to facilitate any of the above) any material which in their reasonable opinion:
 - a. is or may be illegal, defamatory or tortious;
 - b. would or may infringe the proprietary rights of Ryland or any third party.

10. Confidentiality

- (1) Subject to clause 10(2) below each Party must (unless otherwise required by law):
 - a. Keep confidential all information obtained from the other Party (the "Disclosing Party") under or in relation to this Agreement ("Information");
 - b. Not disclose any Information to any Third Party without the prior written consent of the Disclosing Party other than to such persons and to such extent as may be strictly necessary for the performance of this Agreement;
 - c. Not use any Information otherwise than for the purposes of this Agreement;
 - d. Delete, destroy or return to the Disclosing Party any Information (or copies thereof) upon the Disclosing Party's request.
- (2) The provisions of clause 10(1) do not apply to information which:
 - a. Is or becomes public knowledge (otherwise than by a breach of this clause); or
 - b. Was in the possession of the Party concerned without restriction as to its disclosure before it was received from the Disclosing Party;
- (3) The provisions of clause 10(1) do not apply to disclosures of Information for a proper purpose to any public authority, regulatory body or a court of law in legal proceedings or to either Party's senior management, auditors, bankers, lawyers or professional advisers.
- (4) The provisions of this clause 10 shall continue to apply notwithstanding termination of the Agreement.

11. Intellectual Property Rights

Data Management System

- (1) Should DMS be provided to the Client as part of a Project it will be specified in the Project Document;
- (2) All intellectual property rights in the Data Management System ("DMS") are retained exclusively by Ryland;
- (3) Should DMS be provided to the Client pursuant to this Agreement, the Client is granted a perpetual, non-exclusive licence to use DMS for the purposes of this Agreement;
- (4) The Client is not permitted to copy, transfer, reverse-engineer, edit, redistribute or view the source code of DMS in any way;
- (5) Should the Client's project be hosted on a Ryland server, the Client will not be granted access to the DMS source code;
- (6) The Client agrees that should the Client wish to host DMS on a non-Ryland server, the Client will be required to sign a separate DMS Licence Agreement, a copy of which is available on request.

All Other Software

- (7) Ryland uses re-usable code components from its own library as well as custom code written specifically for each Project to build each complete solution for the Client;
- (8) Use of the Ryland re-usable components enables the solution to be developed more quickly and at lower cost than developing the software from scratch for each Client;
- (9) For this reason, ownership (including all intellectual property rights) of Ryland re-usable components used within a Project remains with Ryland;
- (10) The Client is granted a perpetual, non-exclusive licence to use, copy or modify in any way any code component (excluding DMS components, which are covered under clause 11(3) above) used in the Client's Project.
- (11) Subject to clauses 8 and 11(9) above, Ryland retains ownership (including all intellectual property rights) of the entire Project until ownership transfers under subclause 12, below;
- (12) Subject to clauses 8 and 11(9) above, ownership (including all intellectual property rights not reserved herein) of the complete solution (that is, the finished Project), excluding DMS, transfers to the Client when the Project has been completed and all sums due to Ryland in relation to that Project have been paid;
- (13) Once ownership has transferred, the source code for the Project (excluding DMS) will be provided to the Client upon request.

12. Entire Agreement

- (1) This document, together with any Project Document, contains the entire agreement between the parties and supercedes all prior or contemporaneous understandings and agreements relating to the subject matter of this Agreement whether oral or in writing. Neither party was induced by any representation to enter into this Agreement. There are no provisions, representations, undertakings, agreements or collateral agreements other than as set out in this document;
- (2) No addition, deletion or modification to this document may be made other than in writing signed and dated by the Client and a Director of Ryland;
- (3) In the event of a conflict between any Project Document and the terms of this document, the terms of this document shall prevail.

13. Choice of Law

- (1) This Agreement was concluded in England;
- (2) This Agreement is governed exclusively by English law;
- (3) Any disputes whatsoever relating to or arising under this Agreement shall be decided according to English law;
- (4) This Agreement and any matter arising in relation to this Agreement shall be subject to the exclusive jurisdiction of the English courts.

14. Non-solicitation

- (1) For the purposes of this Clause 14:
 - a. "Former Employee" means any former employee of the relevant Party whose employment with that Party terminated in the preceding 12 months;
 - b. "any Contract" means any contract whatsoever, regardless of whether it incorporates the terms of this Agreement or is otherwise covered by this Agreement;
- (2) During, and for a period of 12 months following termination of, any Contract between Ryland and the Client:
 - a. Neither Party shall seek to entice away from the other's employment any Employee of that other Party;
 - b. Neither Party shall offer employment to any Employee of the other party;
 - c. Neither Party shall seek to entice away any Third Party client of the other Party.
- (3) During, and for a period of 12 months following termination of, any Contract between Ryland and the Client, neither Party shall offer employment to any Former Employee of the other Party;
- (4) Either Party shall be entitled to seek an injunction to prevent any breach of this Clause 14;
- (5) In the event of breach of this Clause 14, the Party in breach shall be liable for all resulting losses of the other Party, including (but not limited to):
 - a. Lost business;
 - b. Costs of finding a replacement employee, including (but not limited to):
 - i. All recruitment agency fees;
 - ii. Time spent by the relevant Party in finding a replacement (at the Applicable Rate);
 - c. Costs of training a replacement employee, including (but not limited to):
 - i. Time spent by the relevant Party training the new employee (at the Applicable Rate);

- ii. External training course fees;
 - iii. Losses resulting from the decreased productivity of the new employee.
- (6) The measure of damages in the event of breach of this Clause (being a reasonable estimate of the loss stated in clause 14(5) above) shall be fifty per cent (50%) of the leaving salary (annual) of the Employee or £15,000, whichever is greater.

15. Waiver

- (1) The failure by Ryland or the Client to enforce at any time any one or more of these Conditions shall not amount to a waiver of any such Condition and shall not prevent Ryland or the Client from enforcing such Condition at any future time.

16. Severance

- (1) Should any provision of this Agreement or part thereof be or become inconsistent with or invalid or unenforceable under any applicable law such provision shall be construed as limited to the minimum extent necessary in order to be consistent with and fully enforceable under the relevant law. Such inconsistency, invalidity, unenforceability or limitation shall not affect in any way the validity or effect of the remainder of that provision or of any other provision of this Agreement.

17. Third Parties

- (1) No person or entity who is not a party to this Agreement shall have any rights in relation to this Agreement as a result of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18. Notice

- (1) The 'postal rule' is declared not to apply to any notices given under this Agreement;
- (2) Any notice delivered to the address given in this document for the relevant party shall be deemed to be delivered at the time of actual delivery if during business hours or if otherwise then at the commencement of the following business day;
- (3) Should either party notify the other party in writing of a change of address, then Clause 19(2) shall refer to that new address instead of the address specified in this document;

19. Assignment

- (1) Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

20. Force Majeure

- (1) Force Majeure is defined as circumstances beyond the reasonable control of either party including acts of God, acts of governmental or supra-national authority, war or national emergency, riots, civil disorder, fire, external network or system failures or faults, explosion, flood, epidemic, strikes and other industrial disputes, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable material and currency restrictions;
- (2) Neither party is under any liability to the other party in respect of anything which, apart from this provision, may constitute a breach of this Agreement and which arises by reason of Force Majeure.