



# Terms & Conditions – Issued January 2021 – Page 1

## 1. Scope

These terms and conditions apply to the supply of services and product by Starfish Labs Ltd, a company registered in England and Wales No. 12235735 (hereinafter referred to as 'Starfish Labs', 'Starfish', 'us' or 'we') whose registered office is AberInnovation Offices, AIEC, Aberystwyth University, SY23 3EE, Wales, United Kingdom. These terms shall apply to all transactions unless agreed otherwise in writing by a director of Starfish. We assert our intellectual property rights in all instances of our company name, trading styles and logos. This document is to be viewed by all involved parties as a binding contract in agreement to the terms stated below. Services and products supplied by Starfish Labs may refer to services and products undertaken and delivered by directly employed full-time and part-time employees, sub-contractors and freelancers who may from time to time deliver services on our behalf under our trading name and as representatives of the company. The term 'client' refers to any individual, sole trader, partnership, company, charity, organisation or any other legal entity to whom we supply services or products at the request of that entity or its representative.

## 2. Office Hours and contacting us

Starfish Labs normal office hours during which you may expect a response to enquiries are 09:00 to 17:00 GMT/BST Monday to Friday. You may contact us by post at AberInnovation Offices, AIEC, Aberystwyth University, SY23 3EE, Wales, United Kingdom, by email at: info@starfishlabs.co.uk, by using the email address of the person you wish to contact or by telephone on +44 (0) 1970 602056.

## 3. Instructions to proceed with work

We accept written instruction to proceed with a project. Written instruction may be by hand, by letter, by email or by other digital communication including via social media channels. All such instructions shall be accepted on the basis of these terms and conditions.

## 4. Purchase orders

Clients will provide such Purchase Orders or equivalent documentation as required by their internal policies. For the avoidance of doubt, these terms and conditions shall apply once a client has provided written instruction to proceed with work according to paragraph 3 and we have accepted it, whether or not that is accompanied by a Purchase Order.

## 5. Acceptance of instructions to proceed with work

We accept orders and instructions on the basis that the person who provides those orders and instructions has the authority and power to do so, whether acting as principal or agent. Our acceptance shall mean there is a legally binding contract under these terms and conditions together with such commercial terms relating to the work to be done and payments as are agreed.

## 6. Provision by the client of materials and digital files

Clients agree to provide us with such copy, content, photographs, imagery, information and other assets whether as physical items or digital files as we reasonably require to create the work requested in a timely manner. We accept no responsibility for the content of your published material or for published material or products not being completed by a specific date if we are unable to secure the necessary and/or suitable information and/or materials from you. Where you supply information, materials or digital files we will take every care to secure the best results in the finished product, but we accept no responsibility or liability for imperfect work caused by the unsuitability of any digital files or materials so specified or supplied. Clients hereby indemnify us against any claim in respect of the use of any third party logo, trademark, copy, photograph, illustration, video, or any other imagery that has been incorporated at the client's request.

## 7. Adequacy of instructions

We provide services and goods only on the basis that those instructing us give us proper, timely and necessary instructions (including all documents and digital files required) to enable us to undertake the work instructed effectively and lawfully.

## 8. Work ordered without an estimate or quotation being requested

If a client requests work without asking for an estimate or a quotation, the client agrees that they will be charged at a standard hourly rate, which may be varied at our discretion depending on the type of work and by whom it is delivered on our behalf, for work undertaken. We charge a minimum of quarter of an hour's time for any request undertaken where no quotation exists.

## 9. Design proof approval

We will provide design proofs as pdf files by email or working examples as digital prototype versions for your approval before any work will be published digitally on your behalf or supplied to you for your own use or publication via electronic media. Proofs are for approval of design, layout and content only. By approving a proof, you absolve Starfish Labs of any liability for any errors, discrepancies or omissions which may be present on the proof. Changes you may wish to make after approval of a proof may incur additional costs of which we will inform you at the time. Work will not be published in digital form, or supplied to you or to a third party, without approval of the proof. We will accept approval of proofs by email, in writing, by signing a printed proof or by accepting a proof within an online proofing system.

## 10. Provision of mobile applications (hereinafter referred to as 'apps'), software development and digital marketing services

### 10.1 App development and population

Where estimates are provided, they will be for the provision of a working app to the agreed specification in the estimate. Where the client commissions an app which they can populate and update with content, we will include a basic level of population of content to demonstrate and prove the functionality of the app unless the specification for the project states that we will supply a fully populated product. It is the client's responsibility to fully populate the app for launch and for ongoing population and content updates. Additional work requested, further content population or further functionality requested and developed after the initial estimate has been accepted will be subject to additional fees for work undertaken.

### 10.2 Publication of apps to the App Store, Google Play or any other third party platform

The client takes full responsibility for ensuring that the product complies with the terms and conditions of any third party platform on which the app will be distributed, including, but not limited to, the App Store, Google Play or any other third party platform. The client agrees to indemnify Starfish Labs against any claim arising from any breach of the terms of the platforms or services through which the app is distributed.

### 10.3 Database hosting

Where an app developed for the client requires hosting to deliver the functions of the app, and the client requests that Starfish Labs provides such hosting services, Starfish Labs will provide hosting services using such third party managed servers as, at its discretion, it deems suitable for the project. Starfish Labs will provide a quotation for hosting which may vary depending on the data storage and bandwidth usage for the app from time to time. In the absence of a quotation for hosting, our standard hosting charge for a basic app requiring a database is £200 per annum plus VAT which is chargeable in advance. We may vary this charge depending on bandwidth required for apps requiring significant download or upload requirements and we will quote separately for those requirements. Notice of cancellation of any app hosting will result in the withdrawal of the hosting package after 48 hours. All hosting packages are non-refundable. Annual hosting will, unless cancelled in accordance with 10.4, be renewed automatically without prior notice, as part of the initial contract, on the anniversary of the hosting provision, to provide continuity of service.

### 10.4 Cancellation of hosting

If the client wishes to cancel the hosting renewal this must be done in writing no later than one month before renewal is due, otherwise all charges will become payable for the ensuing 12 months' hosting.

### 10.5 Client provision of hosting

If the client wishes to provide hosting for the app, Starfish Labs will specify the technical and performance requirements for such hosting. The client agrees to give Starfish Labs access to the hosting platform at such a level as to enable Starfish to configure the hosting. This may incur additional fees for time spent in configuring hosting not provided by ourselves. Starfish Labs will not be responsible for the suitability or performance of hosting not provided by ourselves.

### 10.6 App performance

Starfish Labs does not guarantee any level of business performance generated through the app and does not accept any liability for any loss of business resulting from the performance of products provided.



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### 10.7 Malware, hacking and malicious attacks

The client hereby agrees to indemnify Starfish Labs against any loss or damage incurred as a result of an app or hosting service being hacked, subject to malware attack or any such third party intervention outside our control.

### 10.8 SSL Certificates

All servers hosting apps developed by Starfish Labs will be required to have an SSL certificate installed.

### 10.9 Changes to design or functionality

Should changes in the design or functionality of app be requested during build or after the initial concepts have been approved, and to the extent they involve additional work, these will be charged for in addition to the original estimate.

### 10.10 Compatibility with app distribution platforms

As technology is continually advancing, we build apps that are optimised for current Android and iOS platforms. We will not be liable for the failure of an app to work correctly on older versions of operating systems, or on future updates to platforms which may be released after the launch of the app.

### 10.11 Failure of app distribution platforms

We will not be liable in the event of the failure of any third party app distribution or marketing platform, including, but not limited to, the App Store, Google Play or any other third party platform. The client agrees to indemnify us against any claim for loss or damage due to the failure of such distribution or marketing platforms.

### 10.11 Third party APIs and software used in apps

We may incorporate third party Application Programming Interfaces (APIs) or other third party software into apps to provide specific functionality. We will not be liable in the event of the failure of any such third party APIs or other third party software included in the product supplied to the client, and do not guarantee that these services will continue to be available or supported by the API or software provider. To the extent that any such API or third party software becomes unavailable or ceases to function, we will use our reasonable endeavours to either remediate it or procure alternative resources to ensure continued performance of the app. Prior to going ahead with such work, we will provide an estimate for the amount to be payable by you. The client agrees to indemnify us against any claim for loss or damage due to the failure of such APIs or third party software.

### 10.12 Warranty

For a period of one year after go-live, any app or software development work provided by Starfish Labs which proves to be faulty or defective will be corrected free of charge and to the working standard equivalent to launch.

## General Terms and Conditions

### 11. Copyright and intellectual property

We accept material for publication either physically or electronically on the basis that those submitting the material are responsible for ensuring it is free from defamatory matter and does not infringe copyright or any other third party rights, and that those instructing us indemnify us accordingly from any claim which arises regarding the use of material with which you supply us.

Copyright © and all intellectual property, including, but not limited to, initial and ongoing concepts, preliminary designs and sketches, creative design work, screen layout, written copy, photography, computer software and coding created or developed by Starfish Labs employees and sub-contractors remains the property of Starfish Labs Ltd unless agreed otherwise in writing. On completion of the project, the copyright in only the final design/screen layouts and design elements relating to the look and feel incorporated into a finished product will pass to the client, and then only upon full and final settlement of all outstanding monies due for the project.

This excludes any standard website disclaimer statements or generic content that we may provide on the basis that they are generic and may apply to all or many apps, such as a privacy policy or disclaimer.

Neither the client nor another developer may copy any of the coding and use it for another app. Starfish Labs will retain the intellectual property rights in the coding used for the app, including all systems, unless these are Open Source applications or third party APIs or software which have been incorporated into the app.

We reserve the right to use any artwork, app design, digital marketing design or other imagery that we produce on the client's behalf for the purposes of marketing and promoting our services unless the client requests otherwise in writing at the time of commissioning the project. We reserve the right to incorporate our imprint, including imagery as logo or parts of a logo, website and contact details within the design of apps that we develop (with a link to our company website) to identify work that we have produced and to promote Starfish Labs.

Clients undertake to indemnify us against any claim arising from the use of any logo, trademark, photograph, illustration, copy or other imagery that has been incorporated into the client's app at their request. Further, unless the client has requested in writing that we do not do so, the client also indemnifies Starfish against any claim arising from use of examples, images or photographs of the work in promoting Starfish Labs in the media, whether in print, electronically in a website, or via e-mail broadcast.

### 12. Illegal matter

Starfish Labs reserves the right not to publish any matter we reasonably deem illegal, libellous or offensive, or which may be an infringement of the proprietary or other rights of any third party. The client hereby indemnifies us in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, design or of any other proprietary or personal rights contained in any material printed or published electronically or otherwise for the client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

### 13. Requests for the supply of copies of artwork/digital files

Labour costs for retrieval of digital files from our archives will be charged if copies are requested at a future date after delivery of the work at the end of the project, or if elements of design or artwork are required to be sent to a third party after initial supply of work, for example e-mailing illustrations, creative content or artwork, for which a minimum quarter-hour charge is applied.

### 14. Projects put on hold or cancelled

Projects put on hold or cancelled by the client during production by us will be invoiced at the then current stage to cover time, materials and expenses to date and any future expenses wholly related to the client work to the extent they cannot be reasonably cancelled by us. This invoice must be paid in full together with any VAT that falls due, whether or not the Project proceeds to its conclusion.

### 15. Fee structure and estimates

Our fees are based on standard hour/day rates which we will quote on commencement of your project or in an estimate for the work. We reserve the right to amend these rates at any time and will inform you of any change. Rates may be varied depending on the work carried out and we will identify any such variation in your estimate for a particular project. In the absence of an estimate being requested, our standard hourly rates per hour will be charged for creative, app development and software development work and for consultancy work/principals/director's time.

All prices are quoted in, and must be paid in GBP £ Sterling. We will require overseas clients to reimburse any currency conversion charges made by our bank when receiving funds.

We will inform you of our standard hour and day rates at the time as part of the estimate, and reserve the right to amend these rates from time to time.

Our fees and estimates exclude any bought-in costs and expenses incurred (for example: travel, photography, stock imagery, delivery and couriers). Such fees and expenses will be charged in addition to the fees and/or estimates provided by us.

Mileage will be charged for attendance at meetings within the UK at a rate of 45p per mile. Travelling time may be charged at an agreed rate.

Our minimum charge is quarter of an hour of time plus VAT. We record time spent on each element of a project in quarter hour blocks. This provides us with detailed job progress information and a transparent approach to invoicing. Work requested over and above that detailed in any estimate will be charged extra. All prices estimated are based on our previous experience of similar work. All estimates for work are valid for thirty (30) days, after which time proposed work may need to be re-estimated. We take no responsibility for a re-estimated price differing from an original estimate.

We will provide you with an estimated timescale for progress and completion of work and will use our reasonable endeavours to meet those timescales



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(as long as you perform your obligations promptly). Any quoted dates or times are our best estimates only and we cannot guarantee that they will be met.

Amendments to agreed concept layouts and requests for additional work after approval of the concept or project specification may incur additional cost. Any work outside an agreed list of deliverables, in the absence of a quote/estimate or due to authors' amendments is charged at our standard hourly rate. Should authors' amendments requested exceed our estimated time for the project (normally including two stages of reasonable content amendments unless otherwise stated) then these will be charged additionally at our normal hourly rates. We will make every effort to inform you of any additional cost at the time, although sometimes deadlines do not allow us the time to formally advise clients of likely additional costs.

### 16. Value Added Tax

Estimates and quotations exclude any applicable Value Added Tax, which will be added as appropriate.

### 17. Invoicing schedule

For app development projects we invoice on a stage payment basis. We will detail stage payment percentages and schedules by project in our proposal or estimate. Our normal invoicing schedule for app development work is 50% deposit to commence the project, 30% invoiced on proof of build and 20% on handover. To the extent that additional amounts are to be charged as a result of amendments requested by the client, these will be invoiced on the basis of 50% of the extra cost at the time of acceptance by us of the requested changes, then 30% on proof of build and 20% on handover.

For ad-hoc creative, development or coding work on smaller projects for established clients, we invoice monthly for work carried out, calculated on an hourly basis in each month, not on completion of the project. Credit terms, to the extent approved by us, are payment within 30 days from the end of the month in which the invoice is raised. Any queries on invoices must be raised within 14 days of the date of the invoice.

### 18. Payment

Subject to the terms of our proposal or estimate, we may require payment in cleared funds in advance of providing any goods or services. However, where we have agreed credit terms for you our invoices are due for payment 30 days from the end of the month in which the invoice is raised. We reserve the right to charge for costs and expenses incurred in recovering late payments, and to charge interest at the rate then in force pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 as at the due date.

### 19. Liability

We accept no liability for loss or damage (direct, indirect or consequential) including all loss of profit or business arising out of any single claim, event, or series of related claims or events (including claims based on negligence). We accept no liability whatsoever for consequential or third party losses, resulting in a delay in delivery howsoever caused.

### 20. Force Majeure

Starfish Labs accept no responsibility if we are unable to carry out any provision of the contract for any reason beyond our control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency you may, by written notice to ourselves, elect to terminate the contract and pay for work done, materials used and expenses which cannot reasonably be cancelled, but subject thereto shall otherwise accept delivery when available.

### 21. Privacy policy and data protection

Starfish Labs will use personal information which we hold about you to provide our services and products to you, for credit control and market research purposes and to inform you about our services and products or events which we believe may be of interest to you.

We may only share your information with staff, clients, suppliers or other specialist networks with the sole purpose of completing your order or transaction, or in the promotion of our business where examples of work we have carried out for you are displayed. In order to provide services to you we may be required to pass your personal information to parties located outside of the United Kingdom in countries which do not have data protection laws equivalent to those in the UK. Where this is the case we will take reasonable

steps to ensure the privacy of your information. Except in the situations listed above or as required or allowed by law or other regulation, we will not pass, disclose, rent or sell your personal information (other than any personal information which is already publicly available) to any third party without your prior consent.

Any personal information that you submit to our website is similarly subject to the terms set out in this privacy policy. By submitting your personal information, you consent to becoming a registered user of our website, and to us using the details that you have provided within the terms set out in this privacy policy. We may use the information to help us understand more about how our site is used by visitors and to enhance our services to you. By submitting your personal information, you give consent for us to contact you from time to time for marketing, advertising and public relations purposes and for as long as necessary for the purposes of fulfilling our obligations to you. We may also periodically send out information updates to registered users of the Starfish Labs website. We make every effort to ensure the security of our systems. Unfortunately, no data transference or storage can be guaranteed to be 100% secure. As a result, while we strive to protect your personal information after we've received it, we cannot ensure or guarantee the security of the information. You have the right, by written request and on payment of a small fee, to a copy of any personal data (as defined in the Data Protection Act 1998) which we hold about you.

### 22. Customer services

If you are unhappy with any aspect of our service, please contact us. Any complaints will be dealt with sympathetically and we will work with you to reach a satisfactory conclusion.

### 23. Insolvency

Any client ceasing to pay their debts in the ordinary course of business or proving unable to pay their debts as they become due or, being a company, is deemed to be 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 it, Starfish Labs, without prejudice to other remedies, shall (i) have the right not to proceed further with the contract or any other work for the customer and be entitled to charge for work already carried out (whether completed or not) and for materials purchased for the customer, such charge to be an immediate debt due to it, and (ii) in respect of all unpaid debts due from the customer, have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner as we think fit and to apply the proceeds towards such debts.

### 24. Changes to terms and conditions

We reserve the right to make changes to these terms and conditions from time to time. We will inform you of any changes made.

### 25. Jurisdiction

Contracts between us will be concluded in the English language and our relationship with you will be governed by the law of England and Wales and will be subject to the exclusive jurisdiction of the English courts.

These terms and conditions replace all terms and conditions previously issued and were released on 1st January 2021.

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