



# Terms and Conditions

PLEASE READ CAREFULLY BEFORE USING THE SERVICE

## Introduction

These Terms and Conditions are applicable to all development projects ("Projects") that are undertaken by Alma Technologies Limited (company registration number 599153) trading as Alma Digital ("Alma Digital") on behalf of the undersigned customer ("the Customer").

## 1. Acceptance.

1.1. A copy of these Terms and Conditions is submitted to the Customer along with the Project Proposal (as defined below) and must be agreed by the Customer prior to work commencing. In the absence of a signed copy of these Terms & Conditions, payment by the Customer of any deposit or payment shall constitute acceptance of the Terms and Conditions.

1.2. A copy of these Terms and Conditions can be found at <http://www.almadigital.ie> and the latest online version shall always supersede any previously published or distributed copies, unless specifically stated in the Project Proposal.

## 2. Project Proposal and Charges.

2.1. Scope of works included into Project development together with Charges for services to be provided by Alma Digital are defined in the Project proposal that the Customer receives via email ("Project Proposal"). A Project Proposal is valid for a period of 30 days unless otherwise agreed between the Customer and Alma Digital prior to the Project Proposal being issued. Alma Digital reserves the right to alter or decline to provide a Project Proposal after expiry of the agreed timescale.

2.2. All Projects require an advance payment of the fee quoted within the Project Proposal ("Project Fee") prior to work commencing. In the absence of any other agreement, such advance payment shall be an amount equal to 50% of the Project Fee.

2.3. The remaining balance of the Project Fee total shall fall due upon completion of agreed milestones, as detailed in the Project Proposal.

2.4. The Project Fee shall include end-to-end development of the Project according to the Customer's requirements, the release of source-code and/or submission of the resulting app to relevant marketplace (Google Play Market and/or App store) if

there is no other mutual agreement between parties. Project Fee does not include any hosting fees.

2.5. The Project Fee shall be paid by bank transfer.

### **3. Customer Review.**

3.1. Alma Digital will provide the Customer with an opportunity to review the appearance, content and functionality of the Project deliverables at the completion of each milestone and once the Project is completed. Upon each opportunity given the Customer to provide feedback to Alma Digital, the content, appearance and functionality will be deemed to be accepted and approved by the Customer unless the Customer notifies Alma Digital otherwise within 7 (seven) calendar days of the date the materials are made available to the Customer for review. Customer review period can be prolonged based on mutual agreement of the parties.

3.2. In circumstances where the Project deliverables are not deemed to be accepted by the Customer in accordance with clause 3.1, the Customer's account shall be considered as default and Customer shall be bound to pay the balance of the Project Fee or current milestone payment. On receipt of payment, the Customer will be provided with the Project at whatever stage of completion it was at on the expiry of the 7 (seven) day period referred to in clause 3.1.

3.3. In the event the Customer provides feedback on the Custom Project deliverables after the expiration of the 7 day period referred to in clause 3.1, Alma Digital shall have the right to treat the Customer's feedback as an entirely new instruction, in respect of which it shall be entitled to revise or re-issue different Project Proposal and Project Fee accordingly.

### **4. Project Schedule and Content Control.**

4.1. Alma Digital shall endeavour to complete the Project by the date specified in the Project Proposal.

4.2. In order to facilitate the timely completion of the Project, the Customer hereby agrees to delegate a single individual as 'first-point-of-call' to aid Alma Digital with completing the Project in a satisfactory and expedient manner.

4.3. During the Project, Alma Digital will require the Customer to provide feedback, copy and images. If this is not provided within two weeks of an official request by email then Alma Digital reserves the right to advise the Customer of a revision to the Project Fee subject to any costs incurred in the project delay. If this is not provided within four weeks from the original email request then the Customer is considered to be in default of the Project, and Alma Digital shall have the right to terminate the Project and raise an invoice in respect of the balance of the Project Fee. Alma Digital may agree, entirely at its own discretion, to recommence any Project previously treated as terminated, subject to both the Customer agreeing a new Project Proposal and payment in full of the Project Fee as specified in the original Project Proposal

## **5. Payment.**

5.1. An invoice will be issued at the start of the Project to cover the advance payment referred to in clause 2.2. Further invoices will be provided by Alma Digital upon completion of each milestone of the Project (or at completion of the Project where no milestones have been agreed).

5.2. Invoices shall be sent by Alma Digital to the Customer via email.

5.3. All invoices are payable on receipt. The Project will not be submitted to any marketplace (Google Play Market and/or App Store) nor will any source code be released to the Customer prior to settlement of the final invoice and otherwise the entire Project Fee having be paid in full.

5.4. If any invoice remains outstanding for more than 30 after the invoice date Alma Digital will consider the Customer's account to be in default.

## **6. Default.**

6.1. In the event of the Customer's default, any information or files on Alma Digital's host space, may be removed by Alma Digital at its sole discretion. Alma Digital shall not be responsible for any loss of data incurred as a result of the removal of the service, nor shall it have any liability in respect of such removal.

6.2. Removal of the Customer's material from Alma Digital's host space does not relieve the Customer of the obligation to pay any outstanding charges assessed to the Customer's account.

6.3. Payments returned unpaid will incur a return charge of EUR 30.00 each and the Customer's account will immediately be considered to be in default until full payment is received by Alma Digital in cleared funds.

6.4. Customers with accounts in default agree to pay Alma Digital's reasonable expenses, including legal fees and costs for collection by third-party agencies, incurred by Alma Digital in enforcing these Terms and Conditions.

## **7. Termination.**

7.1. In the event that the Customer (directly or indirectly) makes or attempts to make contact with an employee or contractor of Alma Digital with the purpose or intention of instructing such persons to undertake any work relating to the Project outside of the agreed arrangements between the Customer and Alma Digital, Alma Digital shall be entitled to terminate this agreement without notice, raise an invoice in respect of all work undertaking in relation to the Project and, subject to payment of such invoice in full, deliver the Project to the Customer in whatever stage of development it had reached at the time such conduct of the Customer became known to Alma Digital.

7.2. Alma Digital shall be entitled to terminate this agreement without notice and with immediate effect if the Customer's account is in default under clause 3.2 or 5.4, without prejudice to Alma Digital's other rights arising in the event of default pursuant to clause 6.

7.3. Termination of the Project by the Customer must be requested in writing or email and will be effective on receipt of such notice by Alma Digital. Telephone requests for termination of services will not be honoured until and unless confirmed in writing or email.

7.4. The Customer will be invoiced for design and development work completed on the Project up to and including the date on which Alma Digital receives written notice of cancellation from the Customer pursuant to clause 7.3, such invoice to be payable within 14 days from the invoice issuance date.

7.5. Any advance payment made pursuant to clause 2.2 is entirely non-refundable and in the event of termination or cancellation for any reason whatsoever shall be forfeited, even where no deliverable work has been completed by Alma Digital.

## **8. Other Terms and Warranty.**

8.1. These Terms and Conditions shall be read together with Non-Disclosure Agreement, the copy of which is placed at <http://www.almadigital.ie/>.

8.2. In delivering the finalised Project, Alma Digital grants a 3 months warranty period commencing on the date the app goes live, in respect of bug fixes validated by Alma Digital only. For the avoidance of doubt this warranty is only given where the Project is completed in full and not in circumstance where this Agreement is terminated early for any reason.

## **9. Intellectual Property Rights**

9.1. The Customer retains all intellectual property rights to all copy, data, files and graphic logos provided by the Customer, and grants Alma Digital the rights to publish and use such materials for the purposes of creating and, where relevant, supporting the Project in addition to using such materials for the purposes of Alma Digital's promotional and marketing activities (except where such use is expressly prohibited by the Customer).

9.2. In the event that any third party intellectual property rights used by the Customer are provided to Alma Digital for the purposes of completing the Project, the Customer shall ensure that all such rights are used by the Customer with the appropriate consents, permissions and/or licences and that use of such materials by Alma Digital shall not constitute an infringement of such third party rights. The Customer agrees to indemnify and hold harmless Alma Digital from any and all claims resulting from the Customer's negligence or inability to obtain proper and sufficient consents, permissions or licences in respect of such third party rights. 9.3. By engaging Alma Digital in respect of the Project, the Customer guarantees to Alma Digital that all necessary third party consents, permissions and/or licences have been obtained in respect of third party intellectual property rights. Alma Digital may request evidence of such consents, permissions and/or licences. Failure by the Customer to produce such evidence shall entitle Alma Digital to terminate the Project following which the Customer shall be issued with an invoice in respect of work undertaken to date, such invoice to be payable upon receipt. Alternatively,

Alma Digital may place a Project on hold pending production of such evidence. Any costs or expenses arising as a result of such delay shall be borne by the Customer in addition to the Project Fee.

9.4. All intellectual property rights arising out of the development and creation of the Project (including source code) shall belong to the Customer.

## **10. Media Delivery Requirements.**

10.1. Unless otherwise specified in the Project Proposal, this agreement assumes that any text will be provided by the Customer in electronic format (text files delivered via e-mail, CD-ROM, DVD, or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpg or .png format.

10.2. Specific requirements relating to media delivery will be discussed and agreed with the Customer prior to commencement of the Project and all special arrangements shall be detailed within the Project Proposal.

10.3. Although every reasonable attempt shall be made by Alma Digital to return to the Customer any images or printed material provided for use in creation of the Customer's App, such return cannot be guaranteed and Alma Digital accepts no liability in respect of lost materials.

## **11. Access Requirements.**

11.1. If the App is to be published on a third-party development account, Alma Digital must first be granted temporary access to the account in order to prepare App submission. If the App is to interact with a third party remote server, the Customer shall provide full access details to storage and content directories to Alma Digital.

11.2. Depending on the specific nature of the Project, other resources might also need to be configured on the server to ensure the correct operation and functionality of the App. The Customer agrees to grant all necessary access to Alma Digital for the purposes of facilitating this.

## **12. Post Project Alterations.**

12.1. Alma Digital cannot accept responsibility for, and shall have no liability in respect of, any alterations to the App caused or instigated by the Customer or a third party following completion of the Project. Such alterations include, but are not limited to additions, modifications or deletions.

12.2. In the event that a Customer wishes to instruct Alma Digital to undertake work required to resolve any issues or problems arising from such modification, Alma Digital shall be entitled to charge an additional fee in respect of such remedial work, to be agreed by the Customer prior to any such work commencing.

## **13. Third Party Services.**

13.1. Alma Digital may require the usage of third party services - for example, Google Maps API - to complete the Customer's Project requirements and will ensure these services are integrated into the Project and that they function correctly upon completion.

13.2. Alma Digital cannot be held responsible for subsequent changes or issues with any such third party services that may result in issues on the App. In the event that the Customer requires Alma Digital to undertake remedial work in respect of subsequent changes to third party services, it shall be entitled to charge an additional fee, to be agreed by the Customer prior to the commencement of such remedial work.

#### **14. General.**

These Terms and Conditions supersede all previous representations, understandings or agreements. The Customer's signature below or payment of an advance fee constitutes agreement to and acceptance of these Terms and Conditions.

Alma Digital reserves the right at any time and from time to time to update, revise, supplement and otherwise modify these Terms and Conditions and to impose new and/or additional terms and/or conditions (collectively referred to as "Additional Terms"). Such Additional Terms will be effective immediately and incorporated into these Terms and Conditions. Additional Terms shall prevail over these Terms and Conditions in the event of a conflict with respect to the applicable services. Amendments will be effective upon posted at <http://www.almadigital.ie>. Your continued use of the services provided by Alma Digital constitutes your acceptance of all such Additional Terms. These Terms constitute the entire agreement between Customer and Alma Digital and supersede all prior representations, agreements, statements and understandings whether verbal or in writing.

The provisions of these Terms and Conditions shall be deemed severable, and if any provision is determined to be illegal or invalid under applicable law, such provision may be changed to the extent reasonably necessary to make the provision, as so changed, legal, valid and binding.

#### **15. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland and any dispute which may arise out of or in connection with the Terms and Conditions or the legal relationship established by them, shall be subject to the exclusive jurisdiction of the Irish Courts, although we retain the right to bring proceedings against you for breach of the Terms and Conditions in your country of residence or any other relevant country. The agreement arising from these Terms and Conditions is agreed to be made in the City of Dublin.