

# Terms & Conditions

## Services

Stream Interactive Ltd ("Stream Interactive") will perform services (the "Services") and provide the deliverables (the "Deliverables") as set out in the project proposal, schedule of services, and in accordance with these Terms and Conditions. Stream Interactive's performance of Services may include advice and recommendations. All decisions relating to the implementation of such advice and recommendations shall be made by and are the sole responsibility of the Client. These Terms and Conditions form an integral part of the Engagement Letter and will govern the performance of the Services. If there is any conflict or inconsistency between the terms of the Engagement Proposal and these Terms and Conditions, then the terms of the Engagement Proposal will prevail.

## Payment

A payment schedule will be agreed that is based on achievement of key milestones. Typically these milestones include a deposit, detailed specification, finished solution before published to live, and live solution working for one month. Additional payments may be scheduled where the time-line is long or timing is behind schedule because of client actions.

Progress payments are to be made within 7 days of invoice. Ongoing payment terms are by the 20th of the month following invoice date. Invoices for a given month are delivered at the beginning of the following month.

Support to rectify genuine code bugs will be provided free of charge for a period of 3 months from final acceptance of the development. Additional support is provided at Stream Interactive's normal hourly rates.

Any default in payment by the client will be handled by a third party debt collector assigned by Stream Interactive, with the client responsible for all debt collection costs, separate and in addition to any Stream Interactive job related fees.

## Project Acceptance

Upon advice from Stream Interactive that the project has to its satisfaction been completed in full, the Client will have thirty (30) days to examine the Project and determine whether or not it is consistent with their Job Specifications. If no advice has been received from the Client within this time frame, the Project will be deemed to be acceptable and a final invoice shall be issued.

## Variations

A detailed specification will be developed as the first phase of production and will include visual concepts, site structure, page content, business functionality and database elements.

If at the completion of this process the specification is not consistent with the beginning expectations as per the general scope set out in this document and the spec web site thus causing significant variation), then the price offered may be reviewed before continuing with the next phase of development. The outcome of the review will be agreement on revised pricing and/or specification details.

After the detailed specification has been agreed, apart from one set of 'cosmetic' content updates during production, any further changes will be charged on a 'time and materials' basis unless otherwise agreed by both parties.

## Scope of Development

The streamSWEET administration platform and the front end website applications that it is used for are intended for use with current common operating systems and browsers.

Where specific project needs require additional functionality to support uncommon software, specific third party integration or support for older versions of browsers or operating systems Stream Interactive will treat this work as variation or custom component of development, typically charged on an hourly rate, or as otherwise agreed.

## Ongoing Work

Where the proposal or schedule of services includes provision for on going hosting, development or annual plan work an annual price will be determined, invoiced as per the agreed time frame (usually monthly). Where ongoing work is based on a budgeted allowance chargeable activity includes time spent becoming familiar with third party software, developing ideas, figuring solutions, planning and writing specifications, corrective action and adjustment to a normal development level.

## Client Responsibilities

The client will use the supplier-provided Website solution as intended. Additionally, the client will:

- Notify the supplier of issues or problems in a timely manner.
- Provide the supplier with access to equipment, software and services for the purposes of maintenance, updates and fault prevention.
- Provide accurate and well considered information to support development in a timely fashion.
- Carry out final staging testing prior to sign off of projects to ensure the system meets the prescribed needs.
- Maintain good communication with the supplier at all times.

## Termination

Either party may terminate the Engagement Letter on thirty (30) days written notice of a material breach which remains uncured at the end of such thirty (30) day period.

## Ownership

Ownership of the streamSWEET system, the core of the software application, remains with Stream Interactive. The Content Management system is in effect being rented by the client. At its option, client may purchase the intellectual property including software platform and all pertinent codes and documentation as set forth in the "Option to Purchase." (if any)

At the client's request, Stream Interactive will provide a copy of the software application elements as best as is reasonably practical. This would include a copy of the site images, database content and core design. It will not be a working version of the Web site as this is driven by the Content Management system, nor will the database content necessarily replicate the structure of the live system. Any such service will be provided on a time and materials basis.

Stream Interactive however reserves the right to withhold provision of these elements where any outstanding fees are due to Stream Interactive by the client.

## Stream Interactive Information

The Client acknowledges that Stream Interactive provides consulting and development services to other clients and agrees that nothing hereunder shall be deemed or construed to prevent Stream Interactive from carrying on such business.

In particular, Client agrees that, notwithstanding anything to the contrary set forth herein:

- (i) Stream Interactive shall have the right to retain a copy of each of the Deliverables for its records;
- (ii) as part of Stream Interactive's provision of the Services hereunder, Stream Interactive may utilise proprietary works of authorship, pre-existing or otherwise, that have not been created specifically for Client, including without limitation software, methodologies, templates, flowcharts, architecture designs, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, and any derivatives thereof, which have been originated, developed or purchased by Stream Interactive or by third parties under contract to Stream Interactive (all of the foregoing, collectively, "Stream Interactive's Information");



(iii) Stream Interactive's Information and Stream Interactive's administrative communications, records, files and working papers relating to the Services shall remain the sole and exclusive property of Stream Interactive and

(iv) Client hereby grants to Stream Interactive a perpetual, royalty free, irrevocable, worldwide, non-exclusive license to use the Deliverables and to create and use derivative works derived from the Deliverables, so long as in doing so Stream Interactive does not disclose Client's identity or Confidential Information.

## Limitation on Warranties

This is a services engagement. Stream Interactive warrants that it will perform services hereunder in good faith, and with due skill, care, and attention, and in a manner that meets all relevant professional standards. Stream Interactive disclaims all other warranties, either expresses or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose.

## Indemnity

The Client shall indemnify Stream Interactive and hold Stream Interactive indemnified against any and all liabilities (except those arising from Stream Interactive's obligations to the Client under this Agreement) or damages sustained by the Client arising directly or indirectly from any negligent act or omission of Stream Interactive in the performance of the Services.

## Limitation on Damages

In no event shall either party nor their respective employees, officers and directors be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). Both parties agree that the Client and Stream Interactive, their employees, officers and directors shall not be liable to the other party for any actions, damages, claims, liabilities, costs expenses, or losses in any way arising out of or relating to the services performed hereunder (except where they arise in connection with any third party claim resulting from the infringement of any third party's trade secret, trademark, copyright or patent rights) for an aggregate amount in excess of the fees paid by Client to Stream Interactive in performing the Services. The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise.

## Cooperation

The Client shall cooperate with Stream Interactive in its rendering of the Services, including, without limitation, providing Stream Interactive with reasonable facilities and timely access to appropriate data, information and personnel of Client. Client acknowledges that when Client's personnel are to work with Stream Interactive's personnel, Client's failure to assign Client personnel having skills commensurate with their role in connection with the Services could adversely affect Stream Interactive's ability to perform. To the extent that Client's failure to assign such personnel or other failure to perform its obligations interferes with Stream Interactive's ability to perform, milestone dates, if any, shall be adjusted accordingly and, for fixed fee engagements, additional Services provided by Stream Interactive attributable to such failures by Client shall be billed at Stream Interactive's standard rates. Client acknowledges and agrees that Stream Interactive may, in performing its obligations pursuant to this Agreement, be dependent upon and using data, material, and other information furnished by Client without any independent investigation or verification thereof, and that Stream Interactive shall be entitled to rely upon the accuracy and completeness of such information in performing the Services.

## Confidentiality

"Confidential Information" means all documents, software, reports, data, records, forms and other materials Stream Interactive and Client provide to each other in the course of the engagement, whether tangible or intangible: (i) that have been marked as confidential; (ii) whose confidential nature has been made known; or (iii) that due to their character and nature, a reasonable person under like circumstances would treat as confidential. Notwithstanding the foregoing, Confidential Information does not include information which: (i) is already known to the other party at the time of disclosure; (ii) is or becomes publicly known through no wrongful act of the other party; (iii) is independently developed without benefit of the other's Confidential



Information; or (iv) is received by or from a third party without restriction and without a breach of an obligation of confidentiality. Neither party shall use or disclose to any person, firm or entity any Confidential Information without the other's express, prior written permission. Notwithstanding the foregoing, Confidential Information may be disclosed to the extent required by law, provided that the party owning such Confidential Information is given reasonable notice and opportunity to seek to prevent or limit its disclosure. These confidentiality restrictions and obligations shall terminate three (3) years after the expiration or termination of the engagement.

## Limitation on Actions

No action, regardless of form, arising under or relating to this engagement, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought by a party not later than one year following the date of the last payment due to such party hereunder.

## Force Majeure

Neither party shall be required to perform any term, covenant, or condition of this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean any acts of God, wars, governmental laws, orders, requirements or actions, enemy or hostile governmental actions, strikes, lockouts, labour employment difficulties, civil commotions, fires, floods, accidents or breakdowns, or any other casualties or conditions which are beyond the reasonable control of either party and not due to the fault or negligence of such party. If, as a result of any of these conditions, either party fails to perform any obligations specified in this Agreement and gives written notice of sale to the other party within ten (10) days of their occurrence, then such failure shall not be deemed a breach or default; and the applicable time periods in which to perform shall be extended, but only to the extent and for the period such condition exists.

## Dispute Resolution

### First Path of Action

A party to this agreement may not commence any Court or arbitration proceedings relating to the dispute unless it has complied with the following clauses except where the party seeks urgent injunctive relief.

A party to this agreement claiming that a dispute ("the Dispute") has arisen under or in relation to this agreement must give written notice ("the Notice") to any other party to this agreement specifying the nature of the Dispute.

On receipt of the Notice by that other party, the parties must attempt in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

If the parties do not agree within seven (7) days of receipt of the Notice (or such further period agreed in writing by them) as to:

- the dispute resolution technique and procedures to be adopted; and
- the timetable for all steps in those procedures; and
- the selection and
- compensation of the independent person required for such technique;

THEN the parties must mediate the Dispute in accordance with the Mediation Rules of the New Zealand Chapter of LEADR (Lawyers Engaged in Alternative Dispute Resolution) and the chairperson for the time being of the New Zealand Chapter of LEADR will select the mediator and determine the mediator's remuneration.

### Second Path of Action

If the dispute is not resolved by mediation as set out above, the dispute shall be referred to a single arbitrator to be nominated and in case the parties or their representatives cannot agree by the Chairman for the time being of the Chamber of Commerce for Auckland. This clause shall be deemed a "submission" within the meaning of the Arbitration Act 1996.

## Assignment

Neither party may assign, transfer or delegate any of the rights or obligations hereunder without the prior written consent of the other party. Stream Interactive shall have the right at any time and without prior consent or approval of Client to subcontract all or part of the Services and/or Deliverables to be provided under the Engagement Letter.

## Severability

In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## Entire Agreement & Governing Law

These Terms and Conditions and the Engagement Letter, including Exhibits thereto, constitute the entire agreement between Stream Interactive and Client with respect to the subject matter hereof and supersede all other oral and written representation, understandings or agreements relating to the subject matter hereof. This Agreement between the parties shall be governed by the laws of New Zealand and the New Zealand Courts shall have non-exclusive jurisdiction, without any application of conflicts of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

## Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered, or sent by prepaid post, courier, or facsimile, to the other Party at the address as shown below:

### **Customer name....TBC**

### **Stream Interactive Ltd**

Level 1, 381 Gt North Rd, Grey Lynn  
PO Box 9861, Newmarket  
Auckland  
New Zealand 1149  
P: + 64 9 376 1126  
F: +64 9 376 1127  
Email: [sanjay@stream.net.nz](mailto:sanjay@stream.net.nz)

