



## Bannerboy General Terms and Conditions

These general terms and conditions form an appendix to and is integral part of the Agreement entered into by the parties. The parties shall specify the production in the Agreement. Should the Agreement with appendices contain any other or contradictory provisions, those provisions shall have precedence over these General Terms and Conditions.

### 1. Definitions

For the purpose of the Agreement, the following terms shall have the meaning set forth below.

"Actual Delivery Date" means the date when the Final Version is delivered to the Customer by the Producer and accordingly is deemed to be approved in accordance with Section 5.3 below.

"Agreed Date for Approval" means the date when the Production shall fulfill the Specification of Requirements in accordance with the Time Schedule and when the Final Version shall be delivered to the Customer.

"Agreement" means the agreement for the Production with any appendices, Specification of Requirements, General Terms and Conditions, as well as amendments and supplements agreed by the parties.

"Confidential Information" means information set forth in Section 14 below.

"Content" means Customer specific material included in the Production other than Software and that consist of pictures, text, sound, music and/or illustrations.

"Defect" means divergence from agreed requirements on Software in accordance with the Specification of Requirements and for which the Producer is liable as set forth in Section 8 below.

"Delivery" means the Producer's delivery of Final Version to the Customer in the manner agreed in the Specification of Requirements. In the event this is not provided for in the Agreement, Delivery shall take place in accordance with the Producer's standard delivery process.

"General Terms and Conditions" means these general terms and conditions.

"Late Delivery" occurs when the Actual Delivery Date for Final Version takes place later than at the Agreed Date for Approval.

"Final Version" means the final version of the Production, in which agreed factual content and cohesive functions are included, and any notices made by the Customer have been corrected and tested by the Producer at Milestone Deliveries.

"Media" means the media on which the Production shall be delivered as set forth in the Agreement.

"Milestone Delivery" means delivery of part of the Production as set forth in the Specification of Requirements and the Agreement. Milestone Delivery may consist of e.g. comprehensive manuscript or separate part of the Production, such as program modules, illustrations, sound and/or picture.

"Object Code" means the software code form in a computer-readable form that is the executable result of the Source Code.

"Production" means the production of Content, Software and other result that the Producer shall produce and deliver to the Customer in accordance with the Agreement

"Project Manager" means a physical person appointed by each party who shall be responsible for the operative governance and who has the power to make for the Agreement binding decisions as

set forth in Section 3.1 below, provided that the Project Managers agree on the decision.

"Software" means the computer programs in Object Code form including preparatory design materials and script for animations or the like, which form part of the Production. Source Code is not included in the term "Software" unless the Parties explicitly have agreed otherwise.

"Source Code" means non-compiled software representation in a certain programming language.

"Specification of Requirements" means the description of the Production and any dividing of Milestone Deliveries, see appendix Specification of Requirements.

"Territory" means the geographical territory for the use of the Production that the Parties have agreed on in the Agreement.

"Third Party Software" means Software and other software to which copyright or other intellectual property rights belong to a party other than the Producer.

"Time Schedule" means the time schedule for the Production that the Parties have agreed on in the Agreement.

### 2. Implementation, subcontractors

2.1 The Producer is responsible for the Production being carried out in accordance with agreed requirements. The Producer is an independent contractor and the Agreement does not constitute an employment or commercial agency relationship between the parties.

2.2 The Producer reserves the right to use subcontractors as advisers or to produce parts of the Production. The use of subcontractors shall not affect the Producer's liability for the Production as a whole.

### 3. Project Managers and steering group

3.1 Each party shall appoint a Project Manager for the Production. The Project Managers shall attend to and follow the work of the Production and discuss, assess and decide on any adjustments to the Specification of Requirements, Time Schedule and remuneration for the Production. Other amendments to the Agreement shall be agreed by the steering group.

3.2 For the Production, a steering group shall be appointed which consists of the Project Managers and key persons to the Production from the Producer and the Customer. The steering group shall meet once (1) every month or more often, should either party require this. The steering group shall receive Milestone Deliveries and Final Version of the Production as well as written information of all adjustments to the Specification of Requirements, Time Schedule and remuneration. Further, the steering group decides on amendments to the Agreement other than decisions that fall under the Project Managers' power, provided that the decision is unanimous, and handles escalated matters.

### 4. Adjustments to the Specification of Requirements and Time Schedule

4.1 The Production shall be produced in accordance with the agreed Specification of Requirements and Time Schedule. These may be adjusted after written approval by the Project Managers of each party.

4.2 The Producer may not refuse adjustment required by the Customer, unless the Producer shows objective reasons for such refusal. The Producer shall immediately notify the Customer if such adjustment will cause an adjustment to the Specification of Requirements, cost increases and/or changes to the Time Schedule. Adjustment shall be approved in writing by the Project Managers of each party. If the Customer does not accept the adjustments proposed by the Producer, the Customer shall notify the Producer without delay, in which case the adjustment shall not be made and the Production shall be produced in accordance with the previously approved wording of the Agreement.

4.3 Should the Customer adjust the Specifications of Requirements in a way so that features are cancelled, or the Customer in other

ways reduces the scope of the Production, the Producer shall be compensated for any work that has been carried out on such cancelled parts in the time between when the Customer placed the order and when the Customer notified the Producer of the reduced scope of delivery.

## **5. Development and Completion of the Production, Milestone Deliveries, Tests and Delivery**

5.1 The Production shall fulfill the function, content, quality and system requirements set forth in the Specification of Requirements and in any adjustments to the Specification of Requirements. In case of failing Java, Flash or similar scripts the Producer shall have the right to use a still from the Production as fallback, and the failing script shall not be considered a Defect in the Production.

5.2 The Customer shall provide the documentation, resources and expertise set forth in the Specification of Requirements as well as any other resources and material which, according to the Producer's further instructions, are necessary for the development of the Production.

5.3 The Parties shall in the Specification of Requirements set out the manner of process for development, delivery and approval of the Production. Unless otherwise agreed, the principles set forth in this Section 5.3 shall apply. If the parties agree to carry out the Production by means of successive Milestone Deliveries, such part deliveries shall be continuously approved as delivered. Delivery of the Production in Milestone Deliveries shall be carried out in accordance with the following principles, unless otherwise agreed in the Specification of Requirements.

a) After the Producer's delivery of a Milestone Delivery, the Customer shall verify and notify the Producer of remarks in the form of divergences from the Specification of Requirements for which the Producer is responsible. This shall be made within the time set forth in the Time Schedule. Unless otherwise agreed, remarks or approval shall be made within five (5) working days from the Producer's delivery. If a legitimate remark has not been given within this time-limit, the Milestone Delivery shall be deemed to have been approved. The Customer is responsible for any test environment and test data required in order to carry out such verification.

b) Should the Producer deem that the Customer's opinions imply changes relating to the Specification of Requirements, the Producer shall notify the Customer thereof, and the parties shall agree on the priority to be made regarding the Customer's different requirements for adjustment in order to uphold the Time Schedule and the agreed remuneration. If the Customer wishes to change priority, and accordingly to include supplementary requirements, the parties shall agree on adjusted Specification of Requirements, Time Schedule and/or remuneration as set forth in Section 4 above.

c) After any timely and legitimate remarks have been provided by the Customer or if the parties have agreed on any adjusted Milestone Delivery, the Producer shall update the Milestone Delivery and deliver a new Milestone Delivery which handles the opinions and any changes or supplements as set forth above. The Milestone Delivery is thereby completed.

d) After completion of a Milestone Delivery as above, all changes and supplements referable to a completed Milestone Delivery will be treated as new or adjusted Specification of Requirements.

e) After the last Milestone Delivery, a Final Version shall be produced and delivered. By the Producer's Delivery of the Final Version, the Production is completed and Actual Delivery Date occurs.

In accordance with the aforementioned, the Customer shall be given the opportunity and shall be obliged to test the performance of the Production for each respective Milestone Delivery.

5.4 Defect in Third Party Software shall not affect approval of Milestone Delivery or the Production in general, and the Producer is not liable for delay or Defect referable to Third Party Software.

5.5 In the event the Time Schedule, in the Producer's opinion, cannot be adhered to, and this is due to insufficient notification from the Customer or otherwise due to deficient fulfillment of the Customer's obligations, the Producer may prolong the Time Schedule with a reasonable period of time. In addition to this, the

Producer is entitled to compensation for its costs due to the delay including, but not limited to compensation for the time that the personnel involved in the Production could not be used for the Production, in which case compensation is payable according to agreed hourly rates or, in the event no such rates have been agreed, the Producer's price list.

5.6 In case of Late Delivery caused by any act or omission of the Producer, the Customer shall be entitled to a penalty payment compounded as an amount equivalent to half (0.5%) per cent of the remuneration for the Production for each whole week of delay, but not more than seven and a half (7.5%) per cent of the Producer's total remuneration for the Production. In the case of late Milestone Delivery, no penalty payment is payable. Penalty payment and penalty is payable only in the case of Late Delivery of Final Version. In addition to what is set forth in this Section 5.6, the Customer is not entitled to any sanctions due to Late Delivery, unless the delay is due to the Producer's willful misconduct or gross negligence. The Customer shall, in order not to lose its right to bring an action, in writing put forward a claim regarding compensation due to Late Delivery no later than three (3) months after Actual Delivery Date has occurred.

## **6 Intellectual property rights**

### **6.1 Rights to the Production**

Copyright and all other rights in and to the Production are vested in the Producer, unless otherwise stated in Section 6.2, below. Pursuant to this Agreement, the Customer is granted a nonexclusive, perpetual right, including a right to use the Production for the Customer's own use within the Territories, limited to the language versions and the Media specified in the Agreement.

### **6.2 Content provided by the Customer**

Copyright and other intellectual proprietary rights in and to Content provided by the Customer are vested in the Customer. Content provided by the Producer is regulated by Section 6.1 above. Pursuant to this Agreement, the Producer is granted a right to use Content provided by the Customer in order to carry out the work under the Agreement, as well as for the time thereafter for reference and demonstration purposes, including partaking in reward competitions. The Producer has no other right to use, nor sell, such Content for commercial purposes.

### **6.3 Right to modify and develop the Production**

The Customer shall have the right to modify, process or develop the Production only when specifically agreed in the Agreement, in which case applicable provisions shall apply.

### **6.4 Notification of rights**

The Customer shall ensure that all copies of the Production and related documentation are labeled with all copyright, ownership or right to use notices contained within the original Final Version or other delivered material of the Production. If the Production is modified or processed by a third party and an agreement has been made in accordance with Section 6.3 above, the Customer shall, on the Producer's request, remove all references to the Producer's distinctive marks or trademarks from the Production and from all copies of the Production.

### **6.5 Third Party Software**

Any Third Party Software included in the Production is licensed by the rights holder of such Third Party Software pursuant to the terms and conditions of the accompanying license agreements.

### **6.6 Mandatory legislation**

The provisions in this Section 6 shall not restrict any right that the Customer may have according to mandatory law.

## **7. Liability due to infringement**

### **7.1 Obligations of the Parties**

Each party shall ensure that consent is procured from concerned right holders as regards use of material supplied by such party for the Production. Further, each party shall ensure that such consent also include the right to transfer, modify, license and distribute the

material in the manner stated in the Agreement. All costs for license from right holders or licensing or royalty payments for material included in the Production shall be paid by the Customer.

## 7.2 Indemnity

Should a party ("defaulting party") fail to carry out his obligations as specified in Section 7.1, the defaulting party undertakes to, at its own expense, hold the other Party harmless from and against any claim regarding infringement due to the Production or otherwise due to deficiencies as specified in Section 7.1. The defaulting party also undertakes to indemnify the other party for any costs and damages that he, due to settlement or judgment may be obliged to pay. The defaulting party's obligation applies only if the other party within reasonable time after receiving a claim notifies the defaulting party in writing of such claims and offers the defaulting party to defend or settle such claim or proceeding.

7.3 The Producer is not liable for any claim towards the Customer regarding infringement caused by the Production being used with another product which is not included in the delivery, by changes to the Production or by the Production being used in a way for which it was not produced.

7.4 Should the Production include any Third Party Software, the terms and conditions regarding liability for infringement for such Third Party Software shall apply. The Producer shall not be held liable for infringement in Third Party Software.

7.5 A Party's liability for infringement in other party's right is limited to what is set forth in this Section 7, unless intent or gross negligence is at hand.

## 8. Liability for Defects and limitation of liability

### 8.1 The Producer's liability for Defects

After Actual Delivery Date, the Producer shall be liable for Defects in the Production that consist of Defects in the Software caused by any act or mission of the Producer or to other circumstances for which the Producer is responsible. The Producer's liability for Defects includes programming defects that are recorded in test protocol at Milestone Delivery or that could not have been discovered by the Customer in connection with these tests but that are discovered at a later stage, with the limitation set forth below. The Producer shall not be liable for Defects or deficiencies in Content after Actual Delivery Date. Further, the Producer shall be liable for the Production not being impaired by infringement on any intellectual property rights in accordance with Section 7, in which case Section 7 applies. The Producer is not liable for Defects in Third Party Software.

The Producer's liability for Defects is conditioned by that Defects are discovered and notified the Producer within thirty (30) days after Actual Delivery Date. The Customer shall, when notifying the Defects, describe the Defects and, if required, report on how the Defects are expressed.

### 8.2 Limitation of liability

The Producer shall not be liable for:

- a) Defects or breach of contract which have only a minor effect upon the agreed functions in the Production,
- b) Defects or breach of contract caused by the Customer's use of the Production together with other equipment or in an environment or manner other than stated in the Specification of Requirements or in any adjustments to the Specification of Requirements,
- c) Defects or breach of contract caused by any modifications to the Production made by the Customer, or otherwise for circumstances for which the Producer is not responsible, or
- d) Defects or breach of contract caused by the Customer not leaving correct information or conditions.

### 8.3 Remedy of Defects

The Producer shall have the right and the obligation to remedy Defects as promptly as the circumstances demand. The Producer is entitled to remedy defects in whole or in part through replacement

of parts included in the Production. Should the Producer fail to remedy the defect or deficiency as specified above, the Customer may give the Producer a reasonable deadline for such remedy to be taken. The Customer shall be entitled to a price reduction commensurate to the Defect if the Defect is not remedied within two weeks. The price reduction shall not exceed seven and a half (7.5%) per cent of the Producer's total remuneration for the Production. The Producer's liability for Defects in the Production is limited to what is set forth in this Section 8.3.

### 8.4 The Producer's liability for damage

The Producer shall be liable, with the limitations stated below, for any damage that the Producer may cause the Customer through breach or negligence in carrying out its obligations according to the Agreement. The Producer's liability for Late Delivery is limited to what is set forth in Section 5.6 and, as regards Defects, to what is set forth in Section 8.3. The liability for damages does not in any case include loss of profits or expected earnings or other indirect damage, such as the Customer's liability to effect compensation to a third party or loss or distortion of data. The Producer's total liability for damages resulting from the Production is limited to direct losses correspondent to the lower sum of ten (10) per cent of the Producer's total remuneration for the Production, or ten (10) times the base amount. This limitation of liability shall not apply in the event of damage caused intentionally or by gross negligence.

The Customer shall, in order not to lose the right to bring an action, put forward claims regarding damages, in writing, no later than three (3) months from the date when the Customer noticed the cause of the Defect, however no later than one (1) year from Actual Delivery Date.

## 9. Third Party Software and Hardware

9.1 The Producer shall in the Specification of Requirements specify the Third Party Software and Hardware required to ensure that the Production can function in accordance with the Specification of Requirements, and that are compatible with the Production.

9.2 The Customer is solely responsible for the purchase, installation and all other measures regarding all such Third Party Software and Hardware specified by the Producer as set forth in Section 9.1.

9.3 If Third Party Software Hardware is included in the delivery, the Producer shall not be liable for Late Delivery, Defects or infringement on any intellectual property rights related to Third Party Software or Hardware. Applicable terms for the Third Party Software Product shall apply for use of this instead of what is set forth in the Agreement.

## 10. Maintenance and support

10.1 Should the Customer require work or delivery related to the Production after Actual Delivery Date, over and above the Producer's liability for Defects as set forth in Section 8, such as modifications, updates, support or training, this may be provided for with the Producer's approval. Unless otherwise explicitly agreed, the Producer is entitled to remuneration for such work or delivery with a running fee according to agreed hourly rates or, if no hourly rates have been agreed, the Producer's price list. As specified in Section 16.7, the Agreement shall in applicable parts apply to such delivery. Payment for work according to this Section 10 shall be paid according to specific agreement or no later than the date for the Producer's delivery of ordered result.

10.2 The Production shall be compatible with the operative systems Internet Explorer, Safari, Google Chrome, Firefox and Opera, in the versions publicly available at the time when the Customer places the order for the Production. Any updates to make the Production compatible with later versions shall be deemed to fall under maintenance and support, even if such versions are released prior to the Actual Delivery Date.

10.3 Any server capacity included in the Production will be sourced from an established and reputable webhosting service. The Producer is not in any way responsible for the functionality of such sourced services.

## 11. Processing of personal data

11.1 Personal data will only be stored upon request of the Customer. The Producer shall take the technical and organizational measures

necessary in order to protect the personal data being processed on the Customer's behalf from unauthorized access, destruction or modification in accordance with the Swedish Personal Data Act (SFS 1998:204).

## 12. Remuneration, payment terms

12.1 Unless otherwise specified in the Agreement or specifically agreed, compensation for the Production is payable with a running fee according to agreed hourly rates or, if no hourly rates have been agreed, the Producer's price list. Fees and costs stated in the Agreement are stated exclusive of value added tax. Unless otherwise specified in the Agreement, the Producer reserves the right to change the agreed hourly rates once a year in accordance with the changes in Statistics Sweden's IT Consulting Index (Swedish. IT-Konsultindex), in which case the calendar quarter under which the Agreement was signed will form basis.

12.2 Remuneration for expenses such as travels or subsistence allowances, is only payable in case of specific agreement between the parties.

12.3 If the Producer is caused extra work or additional costs due to circumstances for which the Customer is responsible, the Customer shall compensate the Producer for such extra work to a running fee according to agreed hourly rates or, if no hourly rates have been agreed, the Producer's price list, as well as for other actual additional costs.

12.4 Payment terms are thirty (30) days from the date of invoice. In the event of late payment the Producer shall be entitled to charge interest for overdue payment with an amount stipulated by law and pause all projects pertaining to the Customer until full payment has been received. The Producer is entitled to request an advance payment of half the remuneration for the Production, to be paid at start of the Production.

## 13. Force majeure and Defects

### 13.1 Force majeure

Should the fulfillment of a party's obligations pursuant to the Agreement be hindered or impeded by circumstances beyond that party's control, e.g. legal enactment, labour dispute, large-scale mobilisation or military call-up, authority regulations, restrictions with respect to power, goods and energy or faults or delay in deliveries from subcontractors as a result of circumstances such as those herein specified, this shall constitute grounds for release and shall lead to a postponement of the obligations and exemption from consequences provided that the party unable to meet his obligations has without delay notified the other party of the situation. Should the discharge of the Agreement be hindered for more than six (6) months, each party may give notice to terminate the Agreement, whereupon the provisions in Section 15.3 relating to remuneration shall apply, irrespective of which party has given notice to terminate the Agreement.

### 13.2 Unknown defects

Should the Producer's use of a development tool commonly used within the industry, directly or indirectly, result in a Defect in the Production, such use shall constitute grounds for temporary discharge leading to a postponement and exemption from consequences, provided that the Producer without delay notifies the Customer as soon as the Producer is informed of such fact. However, the Producer may only claim release if he did not have, or should not have had, any knowledge of the development tool's fault or defect. Should the temporary discharge of the Agreement according to the foregoing paragraph continue for more than two (2) months, each party shall have the right to give notice to terminate the Agreement, whereupon the provisions in Section 15.3 relating to remuneration shall apply, irrespective of which party has given notice to terminate the Agreement.

## 14. Confidentiality

14.1 Each party agrees during the term of the Agreement and for a period of one (1) year from Actual Delivery Date not to disclose information that may be regarded as trade secret or professional secret ("Confidential Information") to a third party without the prior consent of the other party.

14.2 Confidential Information does not include information that a party can show

a) is generally known or generally available;

b) was already known to the party concerned before that party received the information from the other party; or

c) was legitimately received from a third party who was entitled to transfer or disclose the information.

## 15. Term of Agreement, termination

### 15.1 Term of Agreement

This Agreement shall be effective until the later of (i) when Actual Delivery Date takes place and full payment has been received, or (ii) with respect to work under Section 10, until such delivery has been made and full payment has been received.

### 15.2 The Producer's right of termination

The Producer shall have the right to give notice to terminate the Agreement with immediate effect if the Production has been substantially altered or extended, or due to the Customer's substantial delay of the Production. The same shall apply if the Customer violates a provision specified in Section 6, delayed payment is at hand and the Customer has not mended that within thirty (30) days after being requested to do so; the Customer is in other material breach of this Agreement, or is declared bankrupt, or on reasonable grounds can be deemed to be insolvent.

Upon termination of the Agreement pursuant to this Section 15.2, the Producer shall be entitled to reasonable compensation for work performed and costs incurred, including but not limited to set-up time for resources that have been allocated for the Production, plus compensation for loss of profits etc. as a result of the termination of the Agreement.

### 15.3 The Customer's right of termination

The Customer shall have the right to give notice to terminate the Agreement with immediate effect if the Producer is in material breach of the Agreement and has not taken corrective action within thirty (30) days after being requested to do so, is declared bankrupt, files for compounding with creditors or on reasonable grounds can be deemed to be insolvent. In such a case the Producer shall be entitled to compensation for work performed and costs incurred, provided that the work resulted in value for the Customer.

## 16. Miscellaneous

### 16.1 Governing Law and Dispute Resolution

This Agreement shall be governed in accordance with Swedish material laws, without application of its conflict of laws principles. For disputes relating to this Agreement a party may initiate proceedings at Swedish civil court. The first instance for claims shall always be raised at the District Court of Stockholm.

### 16.2 Notice, amendments and modifications

Notice to terminate the Agreement or other notifications shall be given by courier, post or electronic mail to the concerned party's Project Manager. Modifications or amendments to this Agreement shall be made in writing and signed by both parties in order to be binding.

### 16.3 Complete agreement

This Agreement constitutes the final and entire agreement between the parties with respect to the Production, and supersedes and replaces all prior understandings or agreements, written or oral, regarding the subject matter.

### 16.4 Transfer

The Agreement may not be transferred without the other party's approval. The Producer may however transfer the right to receive payments according to the Agreement without the Customer's approval.

### 16.5 Validity

Each party's obligations in respect of Sections 6, 7, 8, 9, 10, 13, 14, 15.2 and 16 shall survive the expiry of this Agreement.