



## General Terms and Conditions

### 1 Price

- 1.1 All Proposals are valid for 30 days (unless a lesser time is stated on the Proposal) from the issue date and are, unless otherwise stated, exclusive of VAT and other charges. We may withdraw a Proposal at any time by notice to you.
- 1.2 We reserve the right to revise our charges at any time in the event of any changes whatsoever to a Proposal, to reflect, for example, the costs of production and raw materials which are to be used in the provision of the Services.
- 1.3 We reserve the right to increase our charges by giving 30 days prior written notice at any time after the first anniversary of the commencement of a Service Agreements.
- 1.4 Where our fees are calculated on the amount of time spent by us the following applies:
  - 1.4.1 'Day' shall mean a period of 7 hours. Where the work carried out in performing the Services exceeds the period of 7 hours, the period shall be charged at the pro-rated rate for a day; and
  - 1.4.2 Where our fees are based on an hourly rate, any time spent which is less than an hour shall be charged on a pro-rated basis.

### 2 Payment

- 2.1 In respect of our supply of the Services, unless otherwise provided in a Proposal, you agree to pay our fees (**Fees**). In most cases, we will issue an invoice for 50% of the total fee which is to be paid before work commences. The second 50% invoice will be issued as the project approaches completion. Once a project has been approved, final payment is due in full. In the case of web site development, final payment will need to be received before the web site is put 'live'.
- 2.2 It is at our discretion that a web site is placed live before final payment is received. In these cases, payment must be received within 7 days. For smaller projects, payment terms may vary.
- 2.3 In respect of any expenses incurred by us including, for example, the cost of hotel, subsistence and travelling in connection with the performance of a Service Agreements or otherwise at your direction, and the cost of any materials or services reasonably and properly provided by third parties required by you, unless otherwise agreed, we will require payment in advance.
- 2.4 All payments due to us from you under a Service Agreement shall be paid to us without deduction, setoff, counterclaim or any other withholding.
- 2.5 Time for all payments due to us from you shall be of the essence.
- 2.6 If you fail to pay us on the due date any amount due to us the whole of the balance of any amount then owing to us shall become immediately due and payable and without prejudice to any other right or remedy available to us we may:
  - 2.6.1 charge interest on such sum due to us for payment at the rate of 3% over Barclays Bank plc base rate accruing on a daily basis and being compounded quarterly until payment is made (before as well as after judgment); and
  - 2.6.2 suspend further performance of all or any Services (irrespective of which Service Agreement they may be ordered under) until payment together with any interest is made in full; and
  - 2.6.3 terminate any and all Service Agreement.
- 2.7 We may without prejudice to any other rights we may have, set off any liability you have to us against any liability we may have to you.
- 2.8 Without prejudice to any right or claim for interest or any other right under these Terms and Conditions all sums due to us shall become immediately due to us on termination of a Service Agreement.

### 3 Liability

- 3.1 Our liability to you under a Service Agreement shall not be limited for:
  - 3.1.1 fraud, fraudulent misrepresentation or dishonesty; and
  - 3.1.2 death or personal injury caused by our negligence.
- 3.2 Subject to clause 3.1 our liability to you arising out of a failure to provide any goods or services to you or any delay in providing any goods or services to you or in connection with our provision of any goods or services shall be limited to that proportion of your actual loss and damage which was directly and solely caused by us (**Direct Loss**).
  - 3.2.1 Subject to clause 3.1, and for the avoidance of doubt, even if you bring a matter to our attention Direct Loss shall not include any indirect or consequential loss or damage which means without limitation any loss of turnover; loss of profits; loss of business; loss of goodwill or similar losses; loss of anticipated savings; or any other economic loss, costs, damages, charges or expenses.



- 3.3 Subject to clause 3.1 our total liability to you for Direct Loss shall be limited to the total amount of charges payable by you to us in the Service Agreement in which the Direct Loss relates. You agree to take out comprehensive insurance with insurers of repute in respect of the liability we are not liable for.
- 3.4 Subject to clause 3.1 we shall not be liable in any way in respect of any failure, delay or defect in the supply or use of the Deliverables caused by your supply or specification of unsuitable Client Materials or content or by the reproduction of the Deliverables by a third party.
- 3.5 No claim regardless of its cause of action arising out of a Service Agreement may be brought by you against us more than six (6) months after the cause of action has arisen.
- 3.6 Subject to clause 3.1 you agree to indemnify us to the fullest extent possible from and against all liability whatsoever or howsoever arising (including without limitation reasonable professional fees) out of or in connection with your breach of any of the terms of a Service Agreement or any such liability brought or threatened against us by a third party (even if we have been negligent) arising out of any such breach.
- 3.7 You acknowledge and agree that in entering into a Service Agreement that you do not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to a Service Agreement) relating to the subject matter of a Service Agreement other than as expressly set out in a Service Agreement. These Terms and Conditions replace and supersede any previous proposals, correspondence, understandings or other communications between us whether written or oral.
- 3.8 You acknowledge that we only contract with persons dealing as businesses. If, however, it is deemed that you are dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) your statutory rights are not affected.

#### **4 Confidentiality**

- 4.1 We shall both at all times use our best endeavours to keep confidential (and to procure that our employees and agents shall keep confidential) any confidential information which either of us may acquire in relation to the business and affairs of the other party in relation to a Service Agreement and neither of us shall use or disclose such information except with the consent of that other or in accordance with the order of a court of competent jurisdiction
- 4.2 Both of our obligations under clause 4.1 shall continue without limit in point of time but shall cease to apply to any information coming into the public domain otherwise than by breach by one of us of our obligations under a Service Agreement provided that nothing contained in clause 4.1 shall prevent either of us from disclosing any such information to the extent required in or in connection with legal proceedings arising out of a Service Agreement.
- 4.3 You agree that we may cite the performance of the Services to our clients and prospective clients as an indication of our experience. We also reserve the right to use any work carried out on your behalf for our own promotional purposes at any time.

#### **5 Our employees and sub-contractors**

- 5.1 You shall not, without our prior written consent, at any time during a Service Agreement, or for a period of six months after termination of any of a Service Agreement, solicit or entice away from us or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of us.
- 5.2 Any consent given by us in accordance with clause 6.1 above shall be subject to you paying to us a fair amount of compensation which shall be an amount equivalent to the total of six months salary or six months service charges as the case may be, prevailing at the time of termination.

#### **6 Risk and Property**

- 6.1 The risk in the Deliverables shall pass to you upon the commencement of their supply or transportation or, where you will not accept supply on the date required by us, to use temporary storage arranged by us. The ownership of the Deliverables and any campaign research including electronic files shall not pass to you until the later of the time when we have received in full (which means cleared funds in our bank account) all sums due in respect of the Deliverables and any other sum which is due to us from you relating to the Services, or the completion of the delivery.
- 6.2 Until ownership of the Deliverables has passed to you under condition 6.1 above you shall:
- 6.2.1 keep the Deliverables stored (at your cost) in satisfactory condition and in such a manner that it remains readily identifiable as our property;
- 6.2.2 hold the Deliverables on a fiduciary basis as our bailee;
- 6.2.3 not destroy or obscure any identifying mark or packaging relating to the Deliverables; and
- 6.2.4 keep the Deliverables insured on our behalf for their full price against all risks and hold proceeds of any such insurance on trust for us and not mix them with any other money nor pay the proceeds into any overdrawn bank account.
- 6.3 Your right to possession of the Deliverables before ownership has passed to you shall terminate immediately if any of the circumstances set out in condition 7.1 of **section 2** of these Terms and Conditions arise or if you fail to make any payment to us on its due date or you otherwise encumber Deliverables.



6.4 You grant us, our agents and employees an irrevocable licence to enter the premises where the Deliverables are stored in order to inspect them, or where your right to possession is terminated to remove them.

6.5 Termination of a Service Agreement shall not affect our rights under this clause.

## **7 Termination**

7.1 You may terminate any Service Agreement by giving written notice to us at any time, but any amounts paid by you to us shall not be refundable. You shall pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by us for the performance of the Services prior to the date of termination.

7.2 Without prejudice to any other right or remedy available to us, we may terminate a Service Agreement if you:

7.2.1 commit a material breach of any of the terms of a Service Agreement (including without limitation late payment) and, if such breach is capable of remedy, fail to remedy the breach within 14 days of receiving notice from us specifying the breach and requiring the breach to be remedied;

7.2.2 enter into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of a solvent amalgamation or reconstruction);

7.2.3 become insolvent;

7.2.4 cease or threaten to cease to carry on business;

7.2.5 compound or make any voluntary arrangement with your creditors;

7.2.6 are the subject of a notice of appointment of an administrator, or a notice of intention to appoint an administrator or liquidator;

7.2.7 are unable to pay your debts as they fall due;

7.2.8 have an encumbrancer take possession of, or a receiver or administrative receiver appointed over, all or any part of its assets; or

7.2.9 take or suffer any similar action due to debt.

7.3 The expiry or termination of a Service Agreements for any reason shall not affect any rights and/or obligations:

7.3.1 accrued before the date of termination or expiry; or

7.3.2 expressed or intended to continue in force after and despite expiry or termination.

## **8 General**

8.1 You consent to the processing by us of all of your personal data (as defined in the Data Protection Act 1988) for the purposes connected with a Service Agreement.

8.2 Neither of us shall be liable for any breach of a Service Agreements directly or indirectly caused by circumstances beyond our reasonable control and which prevents us from performing our obligations to the other, provided that a lack of funds shall not be regarded as a circumstance beyond reasonable control.

8.3 The failure by either of us to enforce at any time or for any period any one or more of the terms or conditions under a Service Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of a Service Agreement.

8.4 If any term or provision in a Service Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to that extent be deemed not to form part of such Service Agreement and the enforceability of the remainder of a Service Agreement shall not be affected.

8.5 You shall not without our prior written consent assign, transfer, charge, sub-contract or otherwise deal in any manner with all or any of your rights or obligation under a Service Agreements. We may at any time assign, transfer, charge, sub-contract or otherwise deal in any manner with all or any of our rights or obligations under a Service Agreements.

8.6 A Service Agreement is made for both our respective benefit and (where applicable) our successors and permitted assigns, but are not otherwise intended to benefit, or be enforceable by anyone else.

8.7 Except for clause 6.4, nothing in a Service Agreements is intended to or shall operate to create a partnership, or to authorise either of us to act as agent of the other, and neither of us shall have authority to act in the name or on behalf of or otherwise to benefit the other in any way.

8.8 Where required under a Service Agreement, we shall act as principal and not agent for you and we will enter into all related contracts as principal.

8.9 For the purposes of the Contracts (Rights of Third Parties) Act 1999 a Service Agreement is not intended to, and does not, give any person who is not a party to a Service Agreement any right to enforce any of its provisions.



## 9 Interpretation

- 9.1 Unless stated otherwise, references to a clause is to a clause in the respective section of these Terms and Conditions.
- 9.2 Unless the context requires otherwise, the singular includes the plural and vice versa.
- 9.3 Clause headings are inserted for convenience and are to be ignored for the purposes of construction.
- 9.4 A reference to a law is a reference to a law as it is in force for the time being taking into account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force.
- 9.5 These Terms and Conditions may only be amended or varied with the written approval of one of our respective duly authorised officers.
- 9.6 Words and expressions of a technical nature are to be construed (unless the context otherwise requires) in accordance with general computer industry use in the United Kingdom.
- 9.7 You confirm and undertake that you have all necessary power, authorisation, consent and approval to validly enter into a Service Agreement.
- 9.8 Where the words **include(s)**, **including** or **in particular** are used in these Terms and Conditions, they are deemed to have the words "without limitation" following them.

## 10 Definitions

- 10.1 Unless the context otherwise requires, the following definitions shall have the following meanings in these Terms and Conditions:
- |                                |   |
|--------------------------------|---|
| "Acceptable Use Policy"        | the terms for the use of our Hosting Services as annexed to these Terms and Conditions, and such other similar terms we may provide from time to time;  |
| "Acceptance Tests"             | the test to be carried out on completion of the Services and/or Deliverables (or part of them as the case may be);  |
| "Bespoke Materials"            | any materials included in the Deliverables by us under a Service Agreement specifically for you and as set out in the Proposal and/or such updated other materials as expressly agreed in writing between us;   |
| "Business Days"                | means a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business;   |
| "Client Materials"             | any materials which are provided or made available to us by you (or on your behalf), including, without limitation, copy, artwork, layouts, designs, paper, software, printed material or electronics files for use by us in undertaking the Services or incorporation into the Deliverables including those set out in any Proposal and/or such other updated materials as expressly agreed in writing between us; |
| "Deliverables"                 | the materials produced on behalf of, or provided to you by us in connection with the Services;  |
| "Evaluation Materials"         | any evaluation material design work, strategic plans and ideas, innovations, creative plans, concepts and ideas and any other advertising or promotional plans or ideas developed by us or on our behalf whether relating specifically to a presentation we give to you or otherwise and including any of our confidential information;   |
| "Fees"                         | the fees for our Services as defined by clause 2.1 of Section 2;  |
| "Hosting Services"             | means the website hosting services described in the Proposal;   |
| "Intellectual Property Rights" | copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks and all other industrial, commercial or intellectual property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world;   |
| "Proof"                        | concepts, roughs of creative work, proofs of copy and drafts of other materials produced by or on our behalf;   |
| "Proposal"                     | any estimate, proposal or quotation document issued by us to you setting out the Services we are offering to provide to you;  |
| "Services"                     | the services we have agreed to provide to you as specified in a Proposal or as otherwise agreed between us that we may from time to time provide to you, which may include some or all of our website design and development services, hosting services and other design services;  |



"Specification"	the specification of the Services as provided in the Proposal;
"Supplier Materials"	any materials (including the Supplier Software) developed by us either before or during any Service Agreement and included in the Deliverables excluding the Bespoke Materials;
"Supplier Software"	any software (in object code only) and any databases developed by us either before or during any Service Agreement and included in the Deliverables;
"Third Party Materials"	any materials owned, supplied or licensed by a third party either before or during any Service Agreement that are used in undertaking Services and/or included in the Deliverables as set out in a Proposal and/or such other updated third party materials as expressly agreed in writing between us; and
"Website"	any website or intranet in respect of which our Services are being provided.

## 11 Notices

- 11.1 Any notice required or authorised to be given by either party under a Service Agreement to the other shall be in writing and shall be sent by pre-paid registered or recorded delivery post or by electronic mail to the other party at the address stated in a Service Agreement or such other address as may be specified by the parties by notice to the other from time to time. Any such notice shall operate and be deemed to have been served at the expiration of 2 Business Days after it is posted or transmitted in the case of delivery by post and on the next Business Day in the case of delivery by electronic mail (if the email has been authenticated by a delivery receipt). In proving such service it shall be sufficient to show that the envelope containing the notice was properly addressed and posted or that the transmission was duly despatched and/or acknowledged as the case may be.

## 12 Governing law and jurisdiction

- 12.1 A Service Agreements shall be governed by and construed in accordance with the law of England and each party agrees to submit to the exclusive jurisdiction of the English courts.

## ANNEX – ACCEPTABLE USE POLICY

- (a) Your use of the Hosting Services shall comply with all applicable laws and/or regulations from time to time in force that relate to your use of the Hosting Services and/or the use or distribution of the Website.
- (b) You shall not use the Hosting Services:
- (i) in any manner that infringes (or may infringe) the Intellectual Property Rights or other proprietary rights of third parties or any applicable law;
  - (ii) to commit or encourage a criminal offence or otherwise do anything unlawful or in breach of any regulation or code of practice;
  - (iii) to knowingly distribute a virus or other electronic material with harmful or destructive properties;
  - (iv) to seek or obtain unauthorised or otherwise unlawful access to any third party computer or telecommunications system (including any of our systems) or to interfere with the functioning of any such systems;
  - (v) to distribute material that is, or may constitute, any type of unsolicited advertising or other promotional materials by multiple emails or other electronic means, commonly referred to as "spam";
  - (vi) to publish, send or receive Illegal Material (as defined by clause 6.1 of section 1 of these Terms and Conditions);
  - (vii) to do anything which does not conform with the acceptable use policies of any connected networks and Internet standards generally; or
  - (viii) for any illegal purpose and Client Materials shall not contain any material deemed illegal or against public policy in any relevant jurisdictions.