

## **TERMS AND CONDITIONS:**

### **1 Definitions and Interpretation**

Unless otherwise provided:

#### **1.1 Definitions 'Acceptance'**

means the Customer signing the Proposal and at this point is deemed to have read, understood and agreed to the Proposal and these terms and conditions;

#### **'Acceptance Date'**

means the date of Acceptance by the Customer;

#### **'Agreement'**

The placing of an order verbally or in writing by the Customer to the Developer following a Proposal is an acceptance of these terms and conditions and forms the 'Agreement';

#### **'Business Day(s)'**

means a day other than Saturday, Sunday and public holidays

#### **'Change control procedure'**

means the procedure by which alterations to the Proposal or the Project are initiated and agreed between the Parties;

#### **'Charges'**

means the sums charged to the Customer, excluding VAT and other sales tax, as set out in the Proposal and these terms and conditions;

#### **'Confidential Information'**

means any information relating to the customers, suppliers, methods, products, plans, finances, trade secrets or otherwise to the business or affairs of the other Party has been identified by the other Party as such, and any information developed by either Party in performing its obligations under, or in consequence of this Agreement;

#### **'Content'**

means all text, graphics, images, sound, data, software, and materials used in the Site;

#### **'Customer'**

means any individual, firm, company or other party with whom the Developer contracts with pursuant to the Proposal

#### **'Customer Content'**

means any Content provided or made available by the Customer;

#### **'Developer'**

means Verve Graphic Design & Marketing Ltd, registered office Unit 1 Darwin Court, Oxon Business Park, Shrewsbury, Shropshire SY3 5AL (Company No. 07594248)

#### **'Developer Content'**

means any Content developed by the Developer either before or during the term of the Agreement and included in the Proposal;

**'End Date'**

means the date when the agreement is concluded in accordance with the Proposal;

**'Force Majeure'**

means an event or sequence of events beyond a Party's reasonable control preventing or delaying it from performing its obligations. Force Majeure does not include for example ability to pay, mechanical difficulties, shortage or increase of price of materials or energy supply, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a Party;

**'Intellectual Property Rights or IPR'**

means copyright, patents, know-how, trade secrets, trademarks, trade names, design right, get-up, database right, chip topography rights, mask works, utility models, domain names and all similar rights and, in each case:

- (i) whether registered or not,
- (ii) including any applications to protect or register such rights,
- (iii) including all renewals and extensions of such rights or applications,
- (iv) whether vested, contingent or future, and
- (v) wherever existing;

**'Month'**

means a calendar month;

**'Parties'**

means Developer and Customer.

**'Proposal'**

means the Proposal annexed with these terms and conditions and titled 'Proposal';

**'Quarter'**

means a period of three months ending on 31 March, 30 June, 30 September or 31 December

**'Services'**

means the services to be provided by the Developer under the Agreement;

**'Site'**

means the website to be serviced and supported by the Developer for the Customer in accordance with the Proposal;

**'Start Date'**

means the date as agreed between the parties as the start date;

**'Third Party Content'**

means any Content owned supplied or licensed by a third party either before or during the term of this Agreement as provided in the Proposal;

**'VAT'**

means value added tax as defined in the Value Added Tax Act 1994.

**1.2 Interpretation**

Unless otherwise provided:

- 1.2.1** each gender includes the others;
- 1.2.2** the singular includes the plural and vice versa;
- 1.2.3** references to clauses, Schedules or Appendices are to clauses, Schedules or Appendices of this Agreement;
- 1.2.4** references to this Agreement include its Schedule and Appendices, as amended from time to time;
- 1.2.5** references to persons include individuals, unincorporated bodies, government entities, companies and corporations;
- 1.2.6** including means including without limitation;
- 1.2.7** general words are not limited by example;
- 1.2.8** clause headings do not affect their interpretation;
- 1.2.9** a document is in agreed terms if initialed or signed by the Parties as agreed;
- 1.2.10** all times, dates and periods in the Agreement will be calculated by reference to the Gregorian calendar;
- 1.2.11** writing includes manuscript, telexes, facsimiles, emails, and other permanent forms.

## **2 Development project**

- 2.1** The Developer will provide the Services in accordance with the Proposal and subject to these terms and conditions and the Customer will comply with these terms and conditions.
- 2.2** The Services will start on the Start Date and conclude on the End Date.
- 2.3** The Parties will each appoint a manager suitably experienced and qualified to manage the Services who will liaise with the other manager promptly, regularly and reasonably to ensure the satisfactory and efficient completion of the Services.

## **3 Charges and payment**

- 3.1** The Customer will pay the Charges set out in the Proposal.
- 3.2** The Customer will make payment of the monthly retainer invoices raised on or immediately after the date due. Other invoices in addition to the monthly retainer invoices are payable within 30 days.
- 3.3** The Developer accepts the following payment methods:
  - 3.3.1** BACS
    - (i) Bank – HSBC
    - (ii) Account Name – Verve Graphic Design & Marketing Ltd
    - (iii) Account Number – 0214 4050
    - (iv) Sort Code – 40-41-30
  - 3.3.2** Cheque
    - (i) Made payable to 'Verve' and crossed ac/ payee
  - 3.3.3** Credit / Debit Card
    - (i) The Customer is to make contact with the Developer
- 3.4** All retainer invoices are to be paid by the Customer monthly in advance and must be paid by standing order.
- 3.5** VAT will be charged on all Charges where eligible and will be payable by the Customer subject to provision by the Developer of a valid VAT invoice.

- 3.6** Payment of Charges will be made by such means as the Developer directs, including online transfer, at the cost of the Customer.
- 3.7** The Developer may, without limiting its other rights, charge interest on any sums due but not paid in full by the due date, at 4 % a year above the base rate of HSBC from time to time in force, plus an administration charge of £150.00.
- 3.8** Interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 3.9** Any Agreement subsequently cancelled by the Customer will be charged at the full contract price.
- 3.10** Title to any goods shall not pass from the Developer to the Customer until the charges have been met in full.
- 3.11** No additional charges other than as set out in the Proposal or these terms and conditions will be payable unless they are approved by the Customer in writing before they are incurred.
- 3.12** The Customer will be liable to the Developer on an indemnity basis for all costs incurred in connection with pursuing the Customer for a breach of any of these terms and conditions, including but not limited to legal fees.

#### **4 Developer responsibilities**

**4.1** The Developer will:

**4.1.1** Provide the service with all reasonable skill and care and deliver the works as specified in the Proposal at the time and in the manner required in the Proposal;

**4.1.2** respond promptly from time to time, at the cost of the Customer to the reasonable requests of the Customer for any additional information or assistance to ensure the successful provision of the service.

#### **5 Customer responsibilities**

**5.1** The Customer will:

**5.1.1** provide accurate and complete Customer Content to the Developer at the time and in the format required by the Proposal to enable the Developer to provide the Services;

(i) The Developer may reject any Customer Content which they deem unsuitable. In these circumstances additional charges may be incurred by the Customer.

**5.1.2** respond promptly from time to time to the reasonable requests of the Developer for any additional information or assistance to ensure the successful completion of the Project.

**5.1.3** not request the Developer to produce works or provide services which may be of an illegal or libellous nature or an infringement of the rights of any third party.

## **6 Intellectual property and licences**

- 6.1** All Customer Content shall remain the property of the Customer or its licensors subject to a non-exclusive worldwide royalty-free licence to the Developer for the purposes of the Agreement.
- 6.2** The Customer will indemnify and keep indemnified the Developer against all claims losses damages costs and expenses arising from any claim or allegation that any Customer Content infringes the Intellectual Property Rights of any third party.
- 6.3** Subject to compliance of the Customer with these terms and conditions including payment of all Charges and other sums due, the Developer will:
- 6.3.1** indemnify and keep indemnified the Customer against all claims losses damages costs and expenses arising from any claim or allegation other than under clause 6.2 that the Project infringes the Intellectual Property Rights of any third party;
  - 6.3.2** grant to the Customer an exclusive non-transferrable royalty free licence (unless exclusivity has been imposed by a third party) to use the Developer Content in accordance with this Agreement;
  - 6.3.3** grant to the Customer an exclusive non-transferrable royalty free licence (unless exclusivity has been imposed by a third party) to use the third party Content in accordance with these terms and conditions;
  - 6.3.4** assign to the Customer any Content created or obtained by the Developer exclusively for the Customer. (unless exclusivity has been imposed by a third party).
- 6.4** Unless expressly stated otherwise, any licence or sub-licence granted by the Developer under these terms and conditions will be on terms that:
- 6.4.1** in the case of software it shall be a licence of object code only unless otherwise expressly provided;
  - 6.4.2** in the case of third party Content it shall be on such terms as the Developer may grant in accordance with the terms;
  - 6.4.3** shall be to the extent and for the purpose only of using and maintaining the Project.
- 6.5** Unless expressly stated otherwise, any licence or sub-licence granted by the Developer under these terms and conditions in respect of the Developer Content will not include rights to:
- 6.5.1** make copies other than for backup purposes; or
  - 6.5.2** modify or develop; or
  - 6.5.3** copy and distribute; or
  - 6.5.4** make derivative works.

**6.6** In the case of claims or potential claims to which the indemnities in clauses 6.2 and 6.3 set out above may apply, prompt notice of any such claim or potential claim must be:

**6.6.1** the party indemnified must give prompt notice in writing of any claim or potential claim to the indemnifying party;

**6.6.2** comply promptly and accurately to all reasonable requests for information and assistance at the cost of the indemnifier;

**6.6.3** make no admission of liability or settlement without the prior written consent of the indemnifying party;

**6.6.4** permit the indemnifier to have full control of any proceedings or negotiations including any defence or settlement.

## **7 Confidential Information**

**7.1** Neither Party will, without the other's prior consent, disclose Confidential Information of the other Party.

**7.2** Neither Party will use the other's Confidential Information except to perform the Services required as detailed within the Proposal.

**7.3** Disclosure of Confidential Information may be made to a Party's:

**7.3.1** officers;

**7.3.2** employees;

**7.3.3** professional advisers; and

**7.3.4** consultants and other agents,

provided that the recipient is subject to no less obligations of confidentiality than the disclosing Party and the Party disclosing is responsible for compliance with the same.

**7.4** Confidential Information does not include information which:

**7.4.1** is or becomes public other than by breach of these terms and conditions;

**7.4.2** was known to the other party before the Agreement without breach of confidence;

**7.4.3** is independently developed by or becomes available to the other Party; or

**7.4.4** is required to be disclosed by law or regulatory authority. In the case of such disclosure the Party subject to such requirement shall first notify the other Party of the actual or potential requirement to disclose and will comply with the reasonable requests of the other Party as to the manner of such disclosure.

**7.5** On termination of the Agreement all Confidential Information, including copies of the same, relating to or supplied by a Party and which is or should be in the other's possession will be returned by the other or (at the first Party's option) destroyed.

**7.6** This clause will remain in force for a period of *two* years from termination of the Agreement.

## **8 Warranties and limitation of liability**

**8.1** Each of the Parties warrants that it has all power and authority to enter into the Agreement and to perform its obligations.

**8.2** The Developer warrants that it will provide the Services with reasonable skill and care.

**8.3** The Customer warrants that:

**8.3.1** it has all rights and licences to provide the Customer Content and to grant all necessary licences to the Developer to provide the Services and to develop the Site;

**8.3.2** any Customer Content will not:

- (i) be dishonest, fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent or pornographic or breach any acceptable use policy of the Developer;
- (ii) infringe any intellectual property rights of the Developer or any third Parties;
- (iii) contain any viruses or other harmful or intrusive programs or other code;
- (iv) breach any laws, statute, regulations standards, or codes of practice of any relevant authority.

**8.4** The Customer's property and all property supplied to the Developer by or on behalf of the Customer will be held, worked on and carried at the Customer's risk.

**8.5** The Developer's liability under this Agreement is as set out below:

**8.5.1** the Developer expressly excludes liability for any errors not corrected by the Customer when proofs / visuals / artwork are submitted to the Customer for approval.

**8.5.2** the Developer expressly excludes liability for any defects and/or breaches caused in full or in part by defects and/or the unsuitability of Customer Content.

**8.5.3** the Developer does not exclude or limit liability for fraudulent misrepresentation or for death or personal injury which arises as a result of the negligence of the Developer, or which is otherwise not excludable or limitable by law.

## **9 Change control procedure**

**9.1** The Developer will amend visuals until the Customer has approved the same, either orally or in writing. Once approved any changes to the approved visuals will be subject to additional charges.

**9.2** On all Desktop Publishing Projects the estimated charges include two sets of amendments.

## **10 Non-solicitation**

**10.1** Without the other's prior written consent, neither Party will, during or for twelve months from expiry or termination of the Agreement, directly or indirectly:

**10.1.1** approach, employ or solicit; or

**10.1.2** enter into an agreement for the provision of services, on a self-employed basis, with, any person who has, during the previous 12 months, been an employee of or supplier of services to the other and engaged in the Agreement; or

**10.1.3** approach or solicit any Customer of the other with whom it came in contact in the previous 12 months as a result of the Agreement.

**10.2** If either Party breaches this clause, it will pay to the other a referral fee equal to *12* months' gross payment offered or contracted under the new contract between such Party and the person, Customer concerned. The Parties acknowledge that this represents a genuine pre- estimate of the loss likely to be suffered through breach of this clause.

**10.3** If the periods stated in this clause are held by a court or tribunal of competent jurisdiction to be void or unenforceable, but would be valid and enforceable if certain words were deleted or the length of the period reduced, such provisions will apply with such modification as required to make them valid and enforceable.

## **11 Dispute resolution**

**11.1** Any dispute arising between the Parties shall first be referred to the project managers of the Parties. If the project managers cannot resolve the dispute within *21* Business Days of such referral, either project manager may refer the dispute to the *Managing Directors* of the Parties. If the Parties cannot amicably resolve any dispute within *21* Business Days of such referral, it may be referred by either Party to expert determination as provided by this clause.

**11.1.1** The Parties will agree the appointment of a suitably qualified expert and failing such agreement within *ten* Business Days the expert will be appointed at the request of either Party by the *President for the time being of the British Computer Society*. The person appointed will act as expert and not as arbitrator.

**11.1.2** The expert will use reasonable endeavours to obtain all relevant information and to give a determination within *20* Business Days after receipt of such information. The decision of the expert will be final and binding on the Parties.

**11.1.3** The Parties will cooperate fully with the requirements of the expert and will bear equally the costs and expenses of the expert.

## **12 Term and termination**

**12.1** The Agreement will start on the Start Date and will terminate on the End Date unless agreed otherwise between the Parties or terminated earlier as provided below.

**12.2** Either Party may terminate the Agreement immediately by notice to the other Party if following breach by the other Party of these terms and conditions, and in the case of a breach capable of remedy, the other Party fails to remedy such breach within 21 Business Days after receipt of notice of the breach giving details of the breach and the remedy required.

**12.3** Either Party may terminate the Agreement immediately by notice to the other Party if:

**12.3.1** (otherwise than for solvent reorganisation) a resolution for winding up is passed by the other Party, or a court order is made for winding up of the other party, or a petition is presented for winding up of the other Party;

**12.3.2** an encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other Party;

**12.3.3** the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

**12.3.4** the other Party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the successor effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);

**12.3.5** anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other Party; or that other Party ceases, or threatens to cease, to carry on business.

## **13 Consequences of termination**

**13.1** Termination of the Agreement for whatever reason will not affect the accrued rights and liabilities of the Parties arising from these terms and conditions at the date of termination or any provisions of these terms and conditions which are expressed, or by their context intended, to survive termination.

## **14 Hosting**

**14.1** The Developer will charge a hosting fee as mentioned within the Proposal. If the Customer chooses to host their website with a third party the Customer will be liable for moving charges. These will be quoted separately upon request.

**14.2** Both parties shall provide one months' written notice to terminate any hosting of a website, said notice is invalid prior to one month before the expiry of the hosting contract; whether this be a monthly, annual or on-going contract. Website and domain renewals are automatic and no notice will be given for the renewal. It is the Customer's responsibility to ensure that they are aware of the renewal dates. The Developer will only give renewal notice if a notification is required for a change of service or cost. Renewal dates are available from the Developer upon request at all times.

**14.3** Pursuant to Clause 14.2, where website hosting is arranged annually no monies will be reimbursed to the Customer if early termination.

**14.4** The Developer is permitted to change the terms and conditions of any hosting agreement upon written notice to the Customer.

## **15 General provisions**

### **15.1 Time**

All times, dates or periods set out in this Agreement are estimates only and contingent upon the Customer meeting all its obligations under this Agreement.

### **15.2 Relationship**

The Parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.

### **15.3 Force Majeure**

**15.3.1** A Party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:

- (i) promptly notifies the other of the Force Majeure event and its expected duration; and
- (ii) uses reasonable endeavors to minimise the effects of that event.

**15.3.2** If, due to Force Majeure, a Party:

- (i) is or is likely to be unable to perform a material obligation; or
- (ii) is or is likely to be delayed in or prevented from performing its obligations for a continuous period of more than *20 Business Days*,

the Parties will, within *20 Business Days*, renegotiate the Agreement to achieve, as nearly as possible, its original commercial intent.

### **15.4 Severability**

The unenforceability of any part of these terms and conditions will not affect the enforceability of any other part. In the case of any provision which is found to be unenforceable, the Parties will promptly and in good faith negotiate a replacement provision consistent with the intent of this Agreement.

### **15.5 Waiver**

**15.5.1** Unless otherwise agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.

**15.5.2** Consent by a Party, where required, will not prejudice their future right to withhold similar consent.

## **15.6 Notices**

**15.6.1** Notices under these terms and conditions will be in writing. They may be given, and will be deemed received:

- (i) by first-class post: *two* Business Days after posting;
- (ii) by airmail: *seven* Business Days after posting;
- (iii) by hand: on delivery;
- (iv) by facsimile: on receipt of a successful transmission report from the correct number; and
- (v) by email: 24 hours from delivery if no notice of delivery failure is received.

## **15.7 Further assurance**

Each Party will, at its own cost, do all further acts and execute all further documents necessary to give effect to the Agreement.

## **15.8 Rights of third Parties**

**15.8.1** This Agreement is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

## **15.9 Assignment and subcontracting**

**15.9.1** The Customer may not, without the Developer's prior written consent, assign or subcontract any right or obligation under these terms and conditions, in whole or in part, such consent not to be unreasonably withheld or delayed.

**15.9.2** The Developer may not without the Customer's prior written consent, assign or subcontract any right or obligation under these terms and conditions, in whole or in part, such consent not to be unreasonably withheld or delayed.

## **15.10 Entire agreement**

This Agreement contains the whole agreement between the Parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement.

## **15.11 Governing law and jurisdiction**

**15.11.1** This Agreement is governed by the law of *England* and the Parties submit to the exclusive jurisdiction of the *English courts*.

## **15.12 Costs**

Each Party is responsible for its legal and other costs in relation to the preparation and performance of the Agreement