

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 The following terms shall have the following meanings:

“Agreement” means these terms and conditions together with the letter and any statement of work to which they are attached;

“Agreed Expenses” means any expenses stated in the letter attached to these terms and conditions; in any statement of work; and/or agreed in writing between the parties, payable by the Client in accordance with clause 4 of this Agreement;

“Client Content” means any software (including any modifications and/or documentation related to it), code, data, product, invention, discovery, improvement, document and/or other material created, prepared, made, or produced by the Client, and/or any of its personnel which is made available to Web Design Guernsey by the Client, including the Client’s website and any content contained within third party administration consoles administered by the Client;

“Confidential Information” means information disclosed by (or on behalf of) one party to the other party in connection with or in anticipation of this Agreement that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be supposed to be confidential. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient or that was lawfully given to the recipient by a third party. It does include the terms this Agreement;

“Web Design Guernsey Materials” means any software (including any modifications and/or documentation related to it), code, data, product, invention, discovery, improvement, document and/or other material created, prepared, made, or produced by Web Design Guernsey, and/or any of its personnel, during the term of this Agreement which was not created specifically and exclusively for the Services;

“Deliverables” means any document and/or other material created, prepared, made, or produced by Web Design Guernsey, and/or any of its personnel, that is provided to the Client under this Agreement except for Pre-existing Property and Web Design Guernsey Materials;

“Intellectual Property Rights” means all copyright and rights in the nature of copyright, database rights, design rights, patents and trade marks (including all goodwill in them), applications for any of the above, moral rights, know-how, confidential information, and/or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world;

“Fee” means the fee stated in the letter attached to these terms and conditions and/or statement of work payable by the Client in accordance with clause 4 of this Agreement;

“Notice” means the number of days’ notice stated on the letter attached to these terms and conditions;

“Pre-existing Property” means any software (including any modifications and/or documentation related to it), code, data, product, invention, discovery, improvement, document and/or other material in which Web Design Guernsey owns the Intellectual Property Rights prior to the Start Date;

“Services” means the services stated in the letter attached to these terms and conditions and any statement of work;

“Start Date” means the date stated on the letter attached to these terms and conditions; and

“Term” means the period of time stated on the letter attached to these terms and conditions.

1.2 In the event of any inconsistency between these terms and conditions, the letter to which they are attached and any statement of work, the letter shall prevail over the statement of work which, in turn, shall prevail over these terms and conditions.

1.3 The words “include” and “including” shall not limit the generality of any words preceding them.

2. PROVIDING THE SERVICES

2.1 The Client shall provide Web Design Guernsey and its personnel with all such access, cooperation and information as are reasonably required by Web Design Guernsey to enable it to provide the Services, including promptly providing all user names and passwords to any Client Content.

2.2 Web Design Guernsey shall provide the Services to the Client with reasonable skill and care in accordance with recognised industry standards and report to the Client regarding the progress and performance of the Services.

2.3 Either party may request a change in the nature or scope of the Services. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the requested change. No such change shall become binding upon the parties unless and until it is agreed in writing between the parties.

3. INTELLECTUAL PROPERTY RIGHTS AND GRANT OF LICENCE

3.1 The Client shall own all Intellectual Property Rights in the Deliverables. To the extent that Web Design Guernsey is deemed to own any rights in the Deliverables, Web Design Guernsey hereby assigns to the Client all Intellectual Property Rights in such Deliverables. Web Design Guernsey shall waive any and all moral rights in the Deliverables to the extent permitted under applicable law. If requested by the Client, Web Design Guernsey shall sign all documents and do all other acts necessary to give effect to this clause.

3.2 The Client (or its licensors) shall retain all Intellectual Property Rights in the Client Content. The Client grants Web Design Guernsey a personal, non exclusive, royalty-free, worldwide licence for the term of this Agreement to use, reproduce, modify and adapt the Client Content (or portions of them) solely for the purpose of providing the Services and/or the Deliverables under this Agreement.

3.3 Web Design Guernsey shall own all Intellectual Property Rights in the Web Design Guernsey Materials and/or Pre-existing Property. To the extent that the Client is deemed to own any rights in the Web Design Guernsey Materials and/or Pre-existing Property, the Client hereby assigns all Intellectual Property Rights in the Web Design Guernsey Materials and/or Pre-existing Property. The Client shall waive any and all moral rights in the Web Design Guernsey Materials and/or Pre-existing Property to the extent permitted under applicable law. If requested by Web Design Guernsey, the Client shall sign all documents and do all other acts necessary to give effect to this clause.

3.4 If Web Design Guernsey incorporates any Pre-existing Property and/or Web Design Guernsey Materials into the Services, Web Design Guernsey grants the Client a personal, non exclusive, royalty-free, perpetual, irrevocable, worldwide licence to use, reproduce, modify and adapt the Web Design Guernsey Materials and/or Pre-existing Property (or portions of them) solely to the extent necessary for the Client to make use of the Services.

4. PAYMENT

4.1 Unless otherwise agreed between the parties in a statement of work or in writing, the Client shall pay the Fee together with any Agreed Expenses to Web Design Guernsey within 30 days of the date of invoice.

4.2 All sums payable under this Agreement are exclusive of VAT which, if applicable, shall be paid in addition.

4.3 Web Design Guernsey may charge interest at the rate of 2% per annum above the base rate of Barclays Bank PLC from time to time, from the due date until the date of actual payment, whether before or after judgment, on any amount which is overdue.

5. TERM AND TERMINATION

5.1 This Agreement shall commence on the Start Date and shall continue for the Term.

5.2 Each party shall be entitled to terminate this Agreement at any time by giving Notice to the other.

5.3 Either party may, on giving written notice to the other, suspend performance of and/or terminate this Agreement with immediate effect if:

- (a) the other party is in material breach of the Agreement and such breach is incapable of remedy;
- (b) the other party is in breach of the Agreement and, where such breach is capable of remedy, fails to remedy such breach within 30 days of being so requested;
- (c) any event of Force Majeure under paragraph 11.1 continues for a period of 30 consecutive days or more.

5.4 Either party may, on giving written notice to the other, suspend performance of and/or terminate an Agreement with immediate effect if:

- (a) the other party enters into an arrangement or composition with or for the benefit of its creditors, goes into administration, receivership or administrative receivership, is declared bankrupt or insolvent or is dissolved or otherwise ceases to carry on business;
or
- (b) any analogous event happens to the other party in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

5.5 Upon the expiration or termination of this Agreement for any reason:

- (a) Web Design Guernsey shall immediately pay the Client any outstanding sums due under this Agreement; and
- (b) if requested, each party shall promptly return to the other party, or destroy and confirm in writing the destruction of, all Confidential Information disclosed to it by the other party.

6. WARRANTIES

6.1 Each party warrants to the other that:

- (a) it has the full power, right and authority to enter into this Agreement; and
- (b) that it will use reasonable care and skill in complying with its obligations under this Agreement.

6.2 The Client warrants to Web Design Guernsey that it owns or is licensed to use the Client Content.

6.3 Web Design Guernsey shall not be liable for breach of any of the warranties or other terms in this Agreement to the extent that the breach arises from:

- (a) any problem with a computer on which the Services and/or Deliverables are accessed, or with any equipment connected to that computer or any other software which is installed on that computer; or
- (b) any problem with a computer which inter-operates with the Services and/or Deliverables, or any software which is installed on that computer; or
- (c) the availability or speed of a network.

6.4 No conditions, warranties or other terms apply to any Services or to any other goods or services supplied by Web Design Guernsey under this Agreement unless expressly set out in this Agreement. No implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

7. INDEMNIFICATION

7.1 The Client shall indemnify Web Design Guernsey from and against any losses, liability, damages, and expenses (including all legal fees) that Web Design Guernsey incurs or are awarded against Web Design Guernsey as a result of any claim against Web Design Guernsey by a third party that the performance of its obligations under this Agreement in accordance with this Agreement infringes that third party's Intellectual Property Rights or constitutes a breach of the Data Protection Act 1998 (as amended or replaced) provided that:

- (a) the Client is given prompt notice of such claim;
- (b) the Client is given sole authority to defend or settle the claim; and
- (c) the Client provides reasonable co-operation to Web Design Guernsey in the defence and settlement of such claim, at Web Design Guernsey's expense.

8. LIMITATION OF LIABILITY

8.1 Save to the extent that this Agreement expressly states otherwise, nothing in this Agreement shall exclude or limit either party's liability under clause 7 (Indemnification).

8.2 Web Design Guernsey shall not be liable in contract, tort (including, without limitation, negligence), pre-contract or other representations (other than fraudulent misrepresentation) or otherwise arising out of or in connection with this Agreement for:

- (a) loss of profit;

- (b) loss of anticipated savings;
- (c) loss of business opportunity;
- (d) loss of or corruption of data;
- (e) loss of goodwill or reputation; or
- (f) indirect or consequential losses,

in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, suffered or incurred by that party arising out of or in connection with the provisions of, or any matter under, this Agreement

8.3 Web Design Guernsey's total liability under or in connection with this Agreement (whether in contract, tort or for any other reason) shall be limited to:

- (a) 125% of the Fees due to Web Design Guernsey under this Agreement in the first calendar year of the Term of this Agreement (or the expired part of it if the claim is made prior to the one year anniversary of the Term);

9. CONFIDENTIALITY

9.1 The recipient of any Confidential Information will not disclose that Confidential Information, except to employees and/or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities:

- (a) use such Confidential Information only to exercise rights and fulfil obligations under this Agreement,
and
- (b) keep such Confidential Information confidential. The recipient may also disclose Confidential Information when required by law.

10. NON SOLICITATION

10.1 During the Term and for six months after the end of the Term, the Client will not, either on its own behalf or for or with any other person, whether directly or indirectly, entice or try to entice away from Web Design Guernsey any person who was an employee of Web Design Guernsey at any time during the last 12 calendar months of the Term.

11. MISCELLANEOUS

11.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control.

11.2 Neither party may assign or otherwise transfer its rights or its obligations under this Agreement in whole or in part without the prior written consent of the other except to a purchaser of all or a substantial part of its assets.

11.3 Either party may sub-contract its obligations under this Agreement in whole or in part only with the prior written consent (which can be by email) of the other party provided that the sub-contracting

party remains fully liable for all such sub-contracted obligations and accepts full liability as between the parties for the actions and/or inactions of its sub-contractors as if such actions and/or inactions were its own.

11.4 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its/their subject matter.

11.5 Each party agrees that it shall have no remedies in respect of any statement, representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

11.6 Failure or delay in exercising any right or remedy under this Agreement shall not constitute a waiver or such (or any other) right or remedy.

11.7 Except as expressly stated otherwise, nothing in this Agreement shall create an agency, partnership or joint venture of any kind between the parties.

11.8 Except as expressly stated otherwise, nothing in this Agreement shall create or confer any rights or other benefits in favour of any person other than a party to this Agreement.

11.9 The invalidity, illegality or unenforceability of any term of this Agreement shall not affect the continuation in force of the remainder of the Agreement.

11.10 This Agreement may be executed in two counterparts each of which shall be deemed an original and which, when taken together, shall constitute one and the same instrument, but this Agreement shall not be binding upon the parties until it has been signed by both parties.

11.11 Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service providing proof of delivery, at the address set out in this Agreement or such other address as the recipient may designate by notice given in accordance with this clause.

11.12 This Agreement shall be construed and enforced in accordance with the laws of Guernsey and the parties submit to the exclusive jurisdiction of the Courts of Guernsey.

11.13 Initial purchase/registration & admin/DNS/management costs of Channel Islands TLDs (such as, but not limited to .GG .JE) domain names are non-refundable.