

# TERMS AND CONDITIONS

## Blimey Creative Ltd

The Customer's attention is particularly drawn to the provisions of condition 23.

### 1 INTERPRETATION

1.1 In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Charges</b>	the charges payable by the Customer for the supply of the Services in accordance with condition 5;
<b>Commencement Date</b>	has the meaning set out in condition 2.2;
<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with condition 27.8;
<b>Contract</b>	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;
<b>Customer or You</b>	the person or firm who purchases Services from the Supplier;
<b>Customer Default</b>	has the meaning given in condition 4.2;
<b>Deliverables</b>	all products and materials developed by the Supplier in relation to the Services in any media;
<b>Delivery Location</b>	has the meaning given in condition 13.2;
<b>Deposit</b>	has the meaning given in condition 5.3.4;
<b>Intellectual Property Rights</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection

	which subsist or will subsist now or in the future in any part of the world;
<b>Order</b>	in the Customer's purchase order form, the Customer's written acceptance of a quotation by the Supplier, or overleaf, as the case may be;
<b>Services</b>	the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Specification;
<b>Service Level Agreement</b>	the Services provided by the Supplier in accordance with condition 12;
<b>Specification</b>	the description or specification of the Services provided in writing by the Supplier;
<b>Supplier or Us</b>	Blimey Creative Limited registered in England and Wales with company number 07986113;
<b>Supplier Materials</b>	all materials, equipment and tools, drawings, specifications, data, documents and other property of the Supplier;
<b>VAT</b>	has the meaning given in condition 5.11.

**1.2 Construction.** In these Conditions, the following rules apply:

- 1.2.1** a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2** a reference to a party includes its successors or permitted assigns;
- 1.2.3** a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4** any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5** a reference to writing or written includes faxes.

**2 BASIS OF CONTRACT**

- 2.1** The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2** The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (the "**Commencement Date**").

- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 28 (twenty eight) days from its date of issue.

### **3 SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use reasonable endeavours to meet any performance dates, if any, specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5 Without limitation, the Supplier specifically denies any implied or express representation that the Services will operate uninterrupted or error-free.

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
- 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
  - 4.1.2 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with such access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

- 4.1.4 provide the Supplier with such information, data and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - 4.1.5 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;
  - 4.1.6 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - 4.1.7 keep and maintain the Supplier Materials at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation, which shall include any act or omission or failure by the Customer's agents, subcontractors or employees ("**Customer Default**"):
  - 4.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this condition 4.2; and
  - 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 4.3 The Customer shall not without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 (twelve) months after completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier.
- 4.4 Any consent given by the Supplier in accordance with condition 4.3 shall be subject to the Customer paying to the Supplier a sum equivalent to 20 % (per cent) of the then current annual remuneration of the Supplier's employee or sub-contractor or, if

higher, 20 % (per cent) of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

## **5 CHARGES AND PAYMENT**

**5.1** The price for the Deliverables shall be the price set out in the Order. The price of the Deliverables is exclusive of all costs and charges of packaging, insurance, transport of the Deliverables, which shall be paid by the Customer when it pays for the Deliverables.

**5.2** Conditions 5.3, 5.4, 5.5 shall apply if the Services are to be provided on a time-and-materials basis. Conditions 5.6 and 5.7 shall apply if the Services are to be provided for a fixed price. The remainder of this condition 5 shall apply in either case.

**5.3** Where the Services are provided on a time and materials basis:

**5.3.1** the Charges shall be calculated in accordance with the Supplier's standard daily rates, as set out in the Specification, as amended from time to time

**5.3.2** the Supplier's standard daily rates are calculated on the basis of a seven and a half hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);

**5.3.3** the Supplier shall be entitled to charge at an overtime rate of three times the normal rate for part days and for time worked by members of the project team outside the hours referred to in condition 5.3.2 on a pro-rata basis;

**5.3.4** the Supplier may request payment in advance of the Services, or a deposit of at least 50% of the quote set out in the Specification ("**Deposit**"). Where a Deposit is required, the balance shall be due upon completion of the Services, unless otherwise agreed in writing by the Supplier;

**5.3.5** the Supplier shall be entitled to charge the Customer for any expenses incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

**5.4** The Supplier reserves the right to increase its standard daily fee rates, provided that such charges cannot be increased more than once in any 12 (twelve) month period. The Supplier will give the Customer written notice of any such increase 2 (two) months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving 2 weeks' written notice to the Customer.

- 5.5 The Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials and those services properly provided by third parties required by the Supplier for the supply of the Services.
- 5.6 Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to the Supplier in instalments as set out in the Specification.
- 5.7 Any fixed price contained in the Specification excludes the cost of hotel, subsistence, travelling and any other ancillary expenses incurred in connection with the Services, and the costs of any materials or services properly provided by third parties required by the Supplier for the supply of the Services.
- 5.8 Subject to Condition 5.9, the Customer shall pay each invoice submitted by the Supplier:
- 5.8.1 within 30 (thirty) days of the date of the invoice; and
- 5.8.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 5.9 If any amount of an invoice is disputed, the Customer shall inform the Supplier of the grounds for such dispute within 5 (five) Business Days of receipt. The Customer shall pay the Supplier the value of the invoice, less the disputed amount, in accordance with this condition 5. Once settlement of the dispute has been agreed, any sum outstanding shall be immediately payable by the Customer to the Supplier in cleared funds to a bank account nominated in writing by the Supplier.
- 5.10 Time for payment shall be of the essence of the Contract.
- 5.11 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.12 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% (per cent) per annum above National Westminster Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 5.13 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or

remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6 INTELLECTUAL PROPERTY RIGHTS**

- 6.1** All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.
- 6.2** The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 6.3** All Supplier Materials are the exclusive property of the Supplier.
- 6.4** The Customer is not permitted to use a design for more than one website without prior written agreement between the Customer and the Supplier.
- 6.5** The Customer agrees that resale or distribution of files produced by the Supplier is forbidden unless prior written agreement is made between the Customer and the Supplier.
- 6.6** The Customer hereby agrees that all media and content made available to the Supplier for use in the provision of the Services is either owned by the Customer or used with full permission of the original authors.
- 6.7** The Customer agrees that the Supplier may include development credits and links within any code the Supplier designs, builds or amends. If the Supplier designs a website for the Customer, the Customer agrees that the Supplier may include a development credit and link displayed on the Customer's website. If the Supplier builds or amends a website for the Customer, the Customer agrees that the Supplier may include a development credit and link displayed on the Customer's web page, which may be within the code but not displayed on a web browser if requested by the Customer.
- 6.8** The Customer agrees that the Supplier reserves the right to include any Services completed for the Customer in its portfolio of work.
- 6.9** The Customer agrees to abide by the terms of any third party software or media included within any work done for the Customer. Examples of this include, but are not limited to, Googlemaps, Media under the Creative Commons license, RSS feeds, Open Source GPL Software etc.
- 6.10** The Supplier shall not be required to use, print, upload or hold any matter which in its opinion is, or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of a third party.
- 6.11** The Supplier shall be indemnified by the Customer in respect of any claims, costs and expenses arising out of any libelous matter or any infringement of copyright,

patent design or any other proprietary or personal rights contained in any material supplied by the Customer. The indemnity shall extend to professional charges.

## **GRAPHIC DESIGN, ADVERTISING AND PRINT**

### **7 METHODS**

- 7.1 All images supplied electronically by the Customer need to be supplied as EPS illustrator vector for logos and 300dpi (min) Photoshop jpeg for pictures and of a suitable quality. Any logos or photographic images that need to be re-drawn will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification. All supplied images requiring scanning or alterations will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification. Images sourced from external image libraries may incur additional licence/royalty charges, which shall be payable by the Customer.
- 7.2 Should the Customer supply text, artwork or images for use by the Supplier in the provision of the Services, the Supplier is not obliged to edit, check or guarantee the correctness thereof in any way whatsoever, and the end product or printing shall be made at the sole risk of the Customer.
- 7.3 The Supplier may charge rent for storage of goods or equipment retained at the Customer's request, or items left with the Supplier before receipt of the Order or after notification to the Customer of completion of the Services.
- 7.4 When required to expedite completion of the Services at the request of the Customer ahead of the time needed for proper production, the Supplier shall not be liable for defects occasioned thereby. Should such delivery require payment of overtime wages, delivery charges or other additional costs, all such extras shall be charged to the Customer's account.

### **8 PROOFING**

- 8.1 After initial design and layout has been produced, a proof will be submitted to the Customer for corrections to be identified by the Customer, via the Supplier's online proofing software.
- 8.2 All amendments required by the Customer will be charged at the Supplier's standard daily rates, as set out in the Specification, unless a fixed price for the Services has been agreed.
- 8.3 On completion of all amendments requested by the Customer, approval must be made via the Supplier's online proofing software. Final artwork files will only be produced once the Customer's approval has been received.
- 8.4 The Supplier shall have no liability to the Customer, whether in contract, tort (including negligence) or otherwise for any errors in the Services after the Customer has approved the proof in accordance with this condition 8.



- 8.5 Digital or printer proofs can be provided if required. The Supplier will provide an estimate of the increase in the Charges as a result of the Customer requesting this service.

## **9 PRINTING**

- 9.1 Standing matter and printers' materials of any kind are effaced or disposed of immediately after the order is executed unless written arrangements are made for retention in advance.
- 9.2 The Supplier shall not be required to work to tolerances closer than those applicable to the materials obtained by him in the ordinary course of trade. No liability shall arise from variation in the standard, quality and performance of such materials.
- 9.3 Every reasonable endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 % (per cent) for work in one colour and 10 % (per cent) for other work being allowed for overs or shortage (4 % (per cent) and 8 % (per cent) respectively for quantities exceeding 50,000) the same to be charged or deducted.

## **10 MATERIALS SUPPLIED BY THE CUSTOMER**

- 10.1 The Supplier will not be responsible for imperfect work caused by defects in or unsuitability of material and equipment supplied to the Supplier. The Supplier will not be responsible for Customer's material wasted in course of production. Extra costs incurred through the use of defective materials or equipment supplied are for the Customer's account.
- 10.2 The Supplier may reject any paper, plates or other materials supplied or specified by the Customer which appear, at the sole discretion of the Supplier, to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification.
- 10.3 Quantities of materials supplied by the Customer shall be adequate to cover normal spoilage.

## **11 MACHINE READABLE CODES**

- 11.1 In the case of machine readable codes or symbols, the Supplier shall print the same as specified or approved by the Customer in accordance with generally accepted standards and procedures.
- 11.2 The Customer shall be responsible for ensuring that the code or symbol will read correctly on the equipment likely to be used by those for whom the code or symbol is intended.
- 11.3 The Customer shall indemnify the Supplier against any claims by any party resulting from the code or symbol not reading or not reading correctly for any reason.

## **12 SERVICE LEVEL AGREEMENTS**

- 12.1** The hours provided in Service Level Agreements can be used in any way, other than for fixed costs and essential services such as web hosting or advertising placement, or towards payment of debts or existing or quoted jobs.
- 12.2** Once an account handler at the Supplier has been given a job brief as part of the Service Level Agreement, if the Services will take longer than 30 minutes, a total estimate of how long the job will take will be provided for approval by the Customer, before the Services are commenced.
- 12.3** For each job requested by the Customer as part of the Service Level Agreement, a minimum of 15 minutes will be deducted from the remaining Service Level Agreement time allowance.
- 12.4** All hours worked as part of a Service Level Agreement are recorded and can be forwarded to the Customer on request.
- 12.5** Once a Customer approaches the final two hours of their Service Level Agreement allowance, the Supplier will endeavour to notify them automatically via email, providing the Customer with an opportunity to review whether or not to purchase another Service Level Agreement.
- 12.6** Any hours that have not been used within the initial 12 (twelve) months after purchase of the Service Level Agreement, will roll over to the following year, up to a maximum of 24 (twenty four) months from the date of purchase. The Supplier reserves the right to increase the hourly rate as business needs dictate, the hours in an Service Level Agreement will be honoured at the original rate at which they were purchased for one year, after which time, any roll-over hours will be applied to subsequent years at the new hourly rate.

## **13 DELIVERY**

- 13.1** The Supplier shall ensure that:
- 13.1.1** each delivery of the Deliverables is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Deliverables, special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Deliverables remaining to be delivered; and
  - 13.1.2** if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 13.2** The Supplier shall deliver the Deliverables to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the

Supplier notifies the Customer that the Deliverables are ready.

- 13.3 Delivery of the Deliverables shall be completed on the Deliverables' arrival at the Delivery Location.
- 13.4 Any dates quoted for delivery of the Deliverables are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Deliverables that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Deliverables.
- 13.5 If the Supplier fails to deliver the Deliverables, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Deliverables. The Supplier shall have no liability for any failure to deliver the Deliverables to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Deliverables.
- 13.6 If the Customer fails to accept or take delivery of the Deliverables within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Deliverables:
  - 13.6.1 delivery of the Deliverables shall be deemed to have been completed at 9.00 am on the 5th Business Day following the day on which the Supplier notified the Customer that the Deliverables were ready; and
  - 13.6.2 the Supplier shall store the Deliverables until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 13.7 If 20 Business Days after the Supplier notified the Customer that the Deliverables were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Deliverables and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Deliverables or charge the Customer for any shortfall below the price of the Deliverables.
- 13.8 The Customer shall not be entitled to reject the Deliverables if the Supplier delivers up to and including 5 per cent more or less than the quantity of Deliverables ordered.
- 13.9 The Supplier may deliver the Deliverables by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **WEBSITE DEVELOPMENT**

## **14 PROGRAMMING**

- 14.1** The Supplier can only program sites to be as secure as reasonably possible at the time of delivery and can not offer any security against future threats or developments.
- 14.2** Once the Customer has acknowledged and accepted completion of the Services, any amendments will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification.
- 14.3** The Supplier develops websites which are compatible with the current version of Microsoft Internet Explorer. If cross-browser compatibility is required, the Customer must advise the Supplier in writing of this requirement before the Commencement Date.
- 14.4** The Customer acknowledges and agrees that the standard development platform (available upon request or at our website [www.blimeycreative.co.uk](http://www.blimeycreative.co.uk)) is an agreeable platform for development of the website and all acceptance testing will occur only on the standard development platform. The Customer further acknowledges and agrees that any requests relating to hardware or software outside the standard development platform will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification.

## **15 CONTENT**

- 15.1** The Customer shall supply the copy for the web pages in clear and usable permanent or electronic form and shall be entirely responsible for the content of their web pages. The Supplier can provide copy for the Customer if required, including for SEO purposes. The Supplier will provide the Customer of an estimate of its additional Charges upon confirmation from the Customer of its requirements.
- 15.2** All images uploaded to websites by the Customer (via CMS, FTP or other) should be optimised (compressed file size). The Supplier can provide advice on the best image editing software packages, but accepts no responsibility for the performance or compatibility of third-party software, or the results they produce.
- 15.3** When a development / testing version of the Customer's website is provided, it is the responsibility of the Customer to test the functionality, read and check all copy, as well as approve the design and images used before approval is given to the Supplier.
- 15.4** The Supplier can provide standard legal disclaimers and privacy policies upon request, but accepts no liability for the suitability of such disclaimers or policies. The Supplier shall charge the Customer for the provision of such standard legal disclaimers and privacy policies in accordance with the Supplier's standard daily rates, as set out in the Specification.

## **16 DOMAIN NAMES, WEBSITE HOSTING AND EMAIL**

- 16.1** The Supplier offers website hosting and database hosting services through the use of third party providers and is subject to requirements set out in these terms and

conditions and any other relevant terms and conditions, policies and notices which may be applicable to the supply of hosting services.

- 16.2** The Supplier and its sub-contractors accept no responsibility for any losses caused through a loss of service.
- 16.3** The Customer agrees that the website hosting and database hosting services shall be removed if it fails to pay the Charges in time or misuses the services. If it takes time for the Supplier to resolve any misuse, the Supplier reserves the right to charge in accordance with the Supplier's standard daily rates, as set out in the Specification.
- 16.4** The Supplier will not be liable for any costs to restore the Customer's service once it has been removed. Any websites with databases will require reprogramming once they have been removed from their original server will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification.
- 16.5** Any work undertaken by the Supplier at the request of the Customer will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification, including investigations regarding problems or loss of service that are not due to the Supplier or its sub-contractors. The Supplier should only be contacted after the Customer has established that any problems are not due to the Customer's systems.
- 16.6** The Customer agrees that registration of a domain name on behalf of the Customer by the Supplier does not provide endorsement of the right to use the name. The Customer is responsible for ensuring they have due title to the domain name. The Supplier holds no liability and the Customer hereby agrees to indemnify and hold harmless the Supplier from any claim resulting from the registration of a domain name on behalf of the Customer.
- 16.7** The domain name is registered in the Customer's own name, with the address and contact details of the Supplier. The Customer should be aware that a domain name is registered with a third party and as such the Customer shall agree to fully abide by the terms and conditions set out by the third party for such services.
- 16.8** The Customer agrees to take all legal responsibility for use of third party domain name and hosting services and supply true and accurate details to the third party services.
- 16.9** The Customer acknowledges that information submitted for registration of domain names is then available to the general public via the Nominet Whois system. However, Customers who are using their website for non-trading purposes may ask the third party registrar for their contact information not to be included in the Nominet Whois system if the domain Top Level Domain is eligible for domain privacy.
- 16.10** The Customer is liable to pay the Supplier for any domain name registrations and the initial set-up of the hosting if included as part of the website build, as set out in the Specification.

- 16.11** Any support relating to the domain name, hosting and email services is between the Customer and the third party service.
- 16.12** Any other domain name and hosting services or costs not included by the Supplier, including, but not limited to further domain name registration fees, domain name transfer charges, yearly domain name renewals, hosting charges, yearly hosting renewals, hosting upgrades, extra disk space, bandwidth and any other related or hidden charges, are to be paid by the Customer to the third party services.
- 16.13** Any modifications needed to be made between the domain name or hosting services are to be made between the Customer and third party service.
- 16.14** The Customer agrees that if at any time their contact details, including email address, change, it is their responsibility to contact the third party and update their contact details. Failure to do so may mean that renewal invoices for the domain name and hosting services are not received by the Customer.
- 16.15** Payment for domain name and hosting services is to be made by the Customer immediately on receipt of an invoice from the third party service. Failure to comply with the payment terms may result in the Customer's domain name becoming available to another party and/or the website and email services becoming unavailable.
- 16.16** The Customer agrees to pass on FTP details and any other access details relating to their domain name and hosting account that the Supplier requires to upload the website if required as part of a project.
- 16.17** The Supplier reserves the right without notice, to cancel, reject or refuse work with domain names or hosting services without reason for such rejection or refusal.
- 16.18** The Customer agrees to be liable for their use of the domain name, hosting and email services with the third party and hereby agrees to indemnify and hold harmless the Supplier from any claim resulting from the Customer's publication of material and use of the domain name, hosting and email services.
- 16.19** The Customer agrees to take full responsibility for all usage of the domain name, hosting and email services and to fully abide by the terms and conditions set out by the third party for such services.
- 16.20** The Supplier and its sub-contractors shall have the right to suspend the Services at any time and for any reason, generally without notice, but if such suspension lasts or is to last for more than 7 (seven) days, the Customer will be notified of the reason in writing.
- 16.21** No backups of any files, databases or any other content will be made unless explicitly set out in the Specification. The time taken to carry out backups will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification.

## **17 ACCEPTABLE USE**

- 17.1 The Supplier reserves the right to refuse to handle:
- 17.1.1 any media that is unlawful or inappropriate;
  - 17.1.2 any media that contains a virus or hostile program;
  - 17.1.3 any media that constitutes harassment, racism, violence, obscenity, harmful intent or spamming; or
  - 17.1.4 any media that infringes privacy or copyright.
- 17.2 The Customer agrees to provide any required information and content required by the Supplier in good time to enable the Supplier to complete a design or website work as part of an agreed project.
- 17.3 We make no representation and give no warranty as to the accuracy or quality of information received by any person via the server and we shall have no liability for any loss or damage to any data stored on the server. The Customer warrants the accuracy, truthfulness and reliability of any information (including, where applicable, statements of opinion or advice) which you place or allow to be placed on your web pages. The Customer warrants that it is authorised to promote and/or provide any information which it promotes and/or provides on its web pages (for example if the Customer is providing financial information, that it holds any necessary authorisation under all relevant legislation).
- 17.4 The Customer represents, undertakes and warrants to the Supplier that it will use the website allocated to it only for lawful purposes. In particular, the Customer represents, warrants and undertakes to the Supplier that it will not use the server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will it authorise or permit any other person to do so.
- 17.5 The Customer will not host, post, publish, disseminate, link to or transmit:
- 17.5.1 any material or information which is unlawful, infringing, threatening, abusive, malicious, defamatory, obscene, indecent, blasphemous, profane or otherwise objectionable in any way;
  - 17.5.2 any material containing a virus or other hostile computer program; or
  - 17.5.3 any material or information which constitutes, or encourages the commission of a criminal offence, or which threatens, harasses, stalks, abuses, disrupts or violates the legal rights (including rights of privacy and publicity) of others, or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.
- 17.6 The Customer will not send bulk email, whether opt-in or otherwise, from the Supplier's sub-contractors' network. Nor will the Customer promote a site hosted on the Supplier's sub-contractors' network using bulk email.

- 17.7 The Customer will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory.
- 17.8 The Customer shall observe the procedures which the Supplier may from time to time prescribe and shall make no use of the server which is detrimental to other customers.
- 17.9 The Customer shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.
- 17.10 In the case of an individual user, the Customer warrants that it is at least 16 (sixteen) years of age and if the user is a company, the Customer warrants that the server will not be used by anyone under the age of 16 (sixteen) years.
- 17.11 The Customer is entirely responsible for any civil or criminal liability that is incurred as a result of any use of its web pages. If the Customer posts or allows to be posted a defamatory or libellous message, it is the Customer that will be deemed to have published it and the Customer agrees that it shall be liable for the consequences of it.
- 17.12 The Supplier and its sub-contractors reserve the right to remove any material which is deemed inappropriate from the Customer's web site without notice (specifically, but not restricted to, Warez and illegal MP3 content).
- 17.13 If the Customer advertises or offers to sell goods or services via its web pages, the Customer undertakes to provide goods in conformity with any description and warranties made. The Customer agrees to comply with all relevant legislation. If the Customer is advertising goods in the course of a trade or business this must clearly be so stated.

## **18 WEB DESIGN**

- 18.1 The Customer agrees that an HTML page built from a graphic design may not exactly match the original design because of the difference between the display in design software and the rendering of HTML code by Internet browser software. The Supplier agrees to try to match the design as closely as is possible when building the code.
- 18.2 Upon completion of agreed design, the Customer is asked to confirm in writing by email or postal mail that the design and the screen size is signed off as complete and agree that any further design alterations are chargeable.
- 18.3 If the Customer requests design or content alterations to pages that have already been completed, new pages or different functionality other than that specified in the original Specification, the Supplier reserves the right to quote separately for these alterations.
- 18.4 The Supplier shall use its reasonable endeavours to create pages that are accessible to search engines. However, the Supplier gives no guarantee that the site will become listed with search engines. The Supplier cannot guarantee any rankings if a website is listed with search engines, and cannot be held liable for any penalties



related to search engines.

- 18.5 If an error or issue with the design or code arises during the project, which does not allow the design or code to match the original specification, then the Customer agrees that the Supplier can apply a nearest available alternative solution.
- 18.6 On request, the Supplier can create a copy of the website on a digital storage device (CD, DVD or USB drive) to be posted to the Customer on project completion. A small charge will be made to cover the cost of this, unless quoted otherwise.
- 18.7 Once the web design is completed, the Supplier will upload the website to the Customer's live web address if included as part of the Services.
- 18.8 After site completion, a Customer or a third party of their choosing may wish to edit their website code to make updates. However, the Customer agrees that it assumes full responsibility for any issues which occur as a result of changing the code itself. If the Customer or a third party of their choosing edits the website code and results in functionality errors or the page displaying incorrectly, the Supplier reserves the right to quote for work to repair the website.
- 18.9 The Supplier reserves the right to assign subcontractors in whole or as part of a project if needed.
- 18.10 The Supplier will keep a copy of the site and design source files when a website project is being worked on. However, the Customer agrees that it is their responsibility to have regular backups made by themselves or the third party hosting services in case of a software or hardware failure at the third party hosting servers.
- 18.11 The Supplier shall make every effort to ensure sites are designed to be viewed by the majority of visitors. Sites are designed to work with the standard development platform, which includes recent versions of the main browsers, Internet Explorer and Mozilla Firefox. The Customer acknowledges and agrees that the Supplier cannot guarantee correct functionality with all browser software across different operating systems.

## **19 THIRD PARTY APPLICATION/Framework UPDATES**

- 19.1 Third-party applications/frameworks including WordPress, Magento, Symfony2, Laravel, Silverstripe and Zend Framework 2 and associated plugins/extensions tend to release periodic updates. Whenever these updates affect the security of the Customer's website, the Supplier reserves the right to charge the Customer, before or after implementing such updates, especially whenever a prompt response is required. If the Customer refuses to pay for such updates, the Supplier reserves the right to either take the Customer's entire website offline, or just the affected sections.
- 19.2 The Supplier shall make every effort to ensure sites are designed to be viewed by the majority of visitors. Sites are designed to work with the standard development platform, which includes recent versions (at the time of development) of the main

browsers, Internet Explorer, Mozilla Firefox and Google Chrome. The Customer acknowledges and agrees that the Supplier cannot guarantee correct functionality with all browser software across different operating systems.

**19.3** The Customer agrees that, following handover of files, any updated software versions of the browsers detailed in the standard development platform, including the browsers Internet Explorer and Mozilla Firefox, domain name set-up changes or hosting set-up changes thereafter may affect the functionality and display of its website. Any work involved in changing the website design or website code for it to work with updated browser software, domain name or hosting changes will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification.

**19.4** The Customer acknowledges and agrees that more advanced applications on a website page may require a newer browser version or plug-in. The Supplier shall have no liability to the Customer, whether in contract, tort (including negligence) or otherwise where the Customer does not upgrade to the new browser version or plug-in. The Customer will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification, for any additional work required as a result of the Customer having not upgraded to a new browser version or plug-in.

## **20 INVESTIGATION CHARGES**

**20.1** Any investigations undertaken by the Supplier at the request of the Customer into problems, such as loss of service, where it is subsequently found that the Supplier or our sub-contractors are not the cause, will be charged in accordance with the Supplier's standard daily rates, as set out in the Specification. Where appropriate/possible, an estimate of the total cost will be given before any work is started.

## **21 SECURITY**

**21.1** Any access to other networks connected to the Supplier or its sub-contractors must comply with the rules appropriate for those other networks.

**21.2** While the Supplier's sub-contractors shall use reasonable endeavours to ensure the integrity and security of the server, neither the Supplier nor its sub-contractors guarantee that the server will be free from unauthorised users or hackers and neither the Supplier nor its sub-contractors shall be under any liability for non-receipt or misrouting of email or web traffic, or for any other failure of email or websites. The Customer's data pages may not be secure against hackers and the Customer takes that risk. If the Customer finds evidence of infiltration, please notify the Supplier and it shall take steps both to try and prevent it and to notify the proper authorities.

**21.3** The Supplier and its sub-contractors shall take reasonable care to avoid introducing computer viruses to the Customer's computer systems and shall not be liable to the Customer by reason of any virus unknowingly introduced to the Customer's system by it for any loss of profit or any direct, indirect, special or consequential loss, damage,

costs, expenses or any claims which arise out of or in connection with such introduction of a computer virus.

**21.4** The Customer shall effect and maintain adequate insurance cover in respect of any loss of service, or loss or damage to data stored on the server.

**21.5** The Customer shall keep secure any identification, password and other confidential information relating to its account and shall notify the Supplier immediately of any known or suspected unauthorised use of the Customer's account or breach of security, including loss, theft or unauthorised disclosure of its password or other security information.

## **22 CONFIDENTIALITY**

**22.1** The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, its agents or its sub-contractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

**22.2** All Supplier Materials supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

**22.3** This condition 22 shall survive termination of the Contract, however arising.

## **23 LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

**23.1** The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- 23.1.1 any breach of the Contract howsoever arising;
  - 23.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and
  - 23.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 23.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 23.3 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
  - 23.3.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 23.3.2 fraud or fraudulent misrepresentation; or
  - 23.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 23.4 Subject to condition 23.1:
  - 23.4.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
    - (a) loss of profit;
    - (b) loss of business;
    - (c) depletion of goodwill or similar losses;
    - (d) loss of anticipated savings;
    - (e) loss of goods;
    - (f) loss of contract;
    - (g) loss of use;
    - (h) loss or corruption of data or information; or
    - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses arising under or in connection with the Contract; and
  - 23.4.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amount paid for the Services.
- 23.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1967 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the

fullest extent permitted by law, excluded from the Contract.

**23.6** This condition 23 shall survive termination of the Contract.

## **24 TERMINATION**

**24.1** Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 (one) months' written notice.

**24.2** Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

**24.2.1** the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 (ten) Business Days of that party being notified in writing to do so;

**24.2.2** the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

**24.2.3** the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

**24.2.4** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

**24.2.5** a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 10 (ten) Business Days;

**24.2.6** an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

**24.2.7** the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- 24.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 24.2.9 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 24.2.2 to condition 24.2.8 (inclusive);
  - 24.2.10 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
  - 24.2.11 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - 24.2.12 the other party (being an individual) is the subject of a bankruptcy petition or order;
  - 24.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 24.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 5 (five) Business Days after being notified in writing to do so.
- 24.4 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in condition 24.2.2) to condition 24.2.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## **25 CONSEQUENCES OF TERMINATION**

- 25.1 On termination of the Contract for any reason:
- 25.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 25.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be

solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

25.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

25.1.4 conditions which expressly or by implication survive termination shall continue in full force and effect.

## **26 FORCE MAJEURE**

26.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of sub-contractors.

26.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

26.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

## **27 GENERAL**

### ***Assignment and other dealings***

27.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

27.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

27.3 The Supplier reserves the right to revise, alter, modify or amend these Conditions without prior notification. Notice of any revision, amendment, or modification will be posted to the Customer.

### ***Notices***

27.4 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a

company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first class post, other next working day delivery service or commercial courier.

**27.5** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 27.4; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

**27.6** The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

#### ***Severance***

**27.7** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

**27.8** If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### ***Waiver***

**27.9** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

#### ***No partnership or agency***

**27.10** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

#### ***Third parties***

**27.11** A person who is not a party to the Contract shall not have any rights to enforce its terms.



***Variation***

- 27.12** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

***Governing law***

- 27.13** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

***Jurisdiction***

- 27.14** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).