

This page (together with the Privacy Policy, Terms of Website Use and Website Acceptable Use Policy) provides information about the Supplier and the legal terms and conditions (**Terms**) on which the Supplier provides any Services.

These Terms will apply to any contract for Services. Please read these Terms carefully and make sure they are understood, before ordering any Services. Please note that any order for Services is subject to and conditional upon acceptance of these Terms. If you refuse to accept these Terms, you will not be able to order any Services.

A copy of these Terms should be printed or saved to a computer for future reference.

Every time Services are ordered, please check these Terms to ensure they are understood as they are amended from time to time.

These Terms are only in the English language.

## **AGREED TERMS**

### **1. INTERPRETATION**

The definitions and rules of interpretation in this clause apply in these Terms throughout, including in the introduction above.

#### **1.1 Definitions:**

**Acceptance:** the acceptance or deemed acceptance of the Site by the Customer pursuant to clause 4.

**Acceptance Tests:** the tests to be carried out on the Site as set out in clause 4, and as described in the Project Plan.

**Business Day:** a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business.

**Change Control Procedures:** the procedures set out in clause 14.

**Charges:** the charges in respect of the Services set out in the Project Plan, together with any charges arising from the Change Control Procedures.

**Confidential Information:** all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

**Customer:** the person, firm or company that acquires Services from the Supplier

**Design Agency:** **Nine Dot Development Limited, Unit 10, Winchester Avenue, Westleigh Business Park, Blaby, Leicester, LE8 4EZ.**

**Effective Date:** the date on which the Supplier agrees in writing to provide the Services in accordance with the Project Plan.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the

right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

**Materials:** the content provided to the Supplier by the Customer from time to time for incorporation in the Site.

**Non-Supplier Defects:** those defects described in clause 4.4.

**Phase:** in relation to the Project Plan, one of the key phases of work identified in the Project Plan.

**Project:** the provision by the Supplier of the Services as set out in these Terms.

**Project Plan:** the document detailing the relevant Phases and other pertinent information, including the timetable within which the Supplier will implement the Project, as agreed between the Customer and the Supplier.

**Server:** a computer server administered by the Supplier as more particularly defined in the Project Plan.

**Services:** the design and development services to be provided pursuant to these Terms as set out in the Project Plan.

**Site:** the website described in more detail in the Project Plan, to be hosted by the Supplier pursuant to these Terms.

**Site Software:** the software for the Site commissioned by the Customer as specified in the Project Plan.

**Site Specification:** the specification for the Site set out in the Project Plan.

**Supplier:** Nine Dot Development Limited, a company incorporated and registered in England and Wales with company number 10833559, and whose registered office is at Unit 10, Westleigh Business Park, Winchester Avenue, Blaby, Leicester, LE8 4EZ .

**Third Party Products:** those third party software products set out in the Project Plan.

**Visitor:** a visitor to the Site.

- 1.2 Clause headings do not affect the interpretation of these Terms.
- 1.3 References to clauses are (unless otherwise provided) references to the clauses of these Terms.
- 1.4 In the event and to the extent only of any conflict between the clauses and the Project Plan, the clauses shall prevail.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.
- 1.8 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9 References to **content** include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a Visitor to that website.

1.10 **Writing** or **written** includes email.

## **2. SCOPE OF THE PROJECT**

2.1 The Supplier shall:

- (a) design, develop and deliver the Site in [three] Phases in accordance with the Project Plan; and
- (b) provide the Services and host the Site from the Server.

## **3. CUSTOMER RESPONSIBILITIES**

3.1 The Customer acknowledges that the Supplier's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer provides to the Supplier. Accordingly, the Customer shall provide the Supplier with access to, and use of, all information, data and documentation reasonably required by the Supplier for the performance by the Supplier of its obligations under these Terms.

3.2 The Customer shall be responsible for the accuracy and completeness of the Materials on the Site in accordance with clause 11.

## **4. DEVELOPMENT AND ACCEPTANCE OF SITE**

4.1 Once the Supplier has completed the design and development of the Site in accordance with the relevant Phase of the Project Plan, the Supplier shall run the Acceptance Tests. The procedure set out in this clause 4 shall be repeated in respect of any other relevant Phase, and any further development works agreed by the parties from time to time.

4.2 The Acceptance Tests shall test compliance of the Site with the Site Specification. The form and detail of such tests is set out in the Project Plan.

4.3 Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. The Supplier shall notify the customer when the tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.

4.4 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility (**Non-Supplier Defect**), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.

4.5 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:

(a) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or

(b) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests.

## **5. THIRD PARTY PRODUCTS**

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Charges payable under clause 7.1.

## **6. PROJECT MANAGEMENT**

6.1 Each party shall appoint a project manager who shall:

(a) provide professional and prompt liaison with the other party;  
and

(b) have the necessary expertise and authority to commit the relevant party.

6.2 The project managers shall meet, whether in person or by any mean which permit the project managers to effectively communicate with each other, at least [once] every week until Acceptance and thereafter at least [once] every month. The Customer shall provide minutes of these meetings to the Supplier.

## **7. CHARGES AND PAYMENT**

7.1 The Supplier shall issue a [monthly] VAT invoice in respect of the Charges, and the Customer shall pay to the Supplier the Charges set out in such Supplier's invoice within 14 days of the date of the Supplier's invoice.

7.2 All Charges are exclusive of VAT.

7.3 If the Customer fails to make any payment due to the Supplier under these Terms by the due date for payment, then, without limiting the Supplier's remedies under clause 13, the Customer shall pay compensatory sums and interest on the overdue amount in the amounts and at the rates provided by the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time). Such compensatory sums and 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 compensatory sums and interest together with the overdue amount.

## **8. WARRANTIES**

8.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform these Terms.

8.2 The Supplier shall perform the Services with reasonable care and skill.

8.3 The Supplier warrants that the Site will perform substantially in accordance with the Site Specification for a period of three months from Acceptance. If the Site does not so perform, the Supplier shall, for no additional charge, carry out any work necessary in order to ensure that the Site substantially complies with the Site Specification.

8.4 The warranty set out in clause 8.3 shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by any Materials.

8.5 These Terms sets out the full extent of the Supplier's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into these Terms or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

## **9. LIMITATION OF REMEDIES AND LIABILITY**

9.1 Nothing in these Terms shall operate to exclude or limit the Supplier's liability for:

- (a) death or personal injury caused by its negligence; or
- (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (c) fraud; or
- (d) any other liability which cannot be excluded or limited under applicable law.

9.2 The Supplier shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

9.3 Subject to clause 9.1, the Supplier's aggregate liability in respect of claims based on events in any year running from the Effective Date or any anniversary thereof arising out of or in connection with these Terms or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 50% of the total Charges payable by the Customer to the Supplier under these Terms in the calendar year immediately preceding the event causing the alleged loss or damage.

## **10. INTELLECTUAL PROPERTY RIGHTS**

10.1 All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software), but excluding the Materials, arising in connection with these Terms shall be the property of the Supplier, and the Supplier hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site.

10.2 The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.

10.3 The Supplier shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 10.2.

10.4 The indemnities in clause 10.2, clause 10.3 and clause 11.4 are subject to the following conditions:

(a) the indemnified party promptly notifies the indemnifier in writing of the claim;

(b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

(c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

(d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

10.5 The indemnities in clause 10.2, clause 10.3, clause 11.4 and clause 11.5 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

## **11. SITE CONTENT**

11.1 The Supplier shall update the Site with Materials provided from time to time by the Customer. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).

11.2 The Supplier shall grant the Customer access to the Server in order to update information held on the Site.

11.3 The Supplier shall include only Materials on the Site. The Customer acknowledges that the Supplier has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. The Supplier reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. The Supplier shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.

11.4 The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.

11.5 The Supplier may include the statement "Designed by [Nine Dot Development]" on the home page of the Site in a form to be agreed.

## **12. DATA PROTECTION**

12.1 The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Customer:

(a) it shall act only on instructions from the Customer; and

(b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

12.2 In this clause 12, **Personal Data** has the meaning given in the Data Protection Act 1998.

### **13. TERM AND TERMINATION**

13.1 These Terms shall commence on the Effective Date and shall (subject to earlier termination under this clause 13) continue until terminated by either party giving the other 3 months' written notice to terminate, expiring on or after the first anniversary of the Effective Date.

13.2 Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under these Terms on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;

(b) the other party commits a material breach of any term of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(c) 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 is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(d) the other party commences negotiations with all or any class of any 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;

(e) 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;

(f) 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);

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

(h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

(i) 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 the other party's assets and such attachment or process is not discharged within 14 days;

(j) 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 clause 13.2(c) to clause 13.2(h) (inclusive);

(k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

(l) any warranty given by the other party in clause 8 of these Terms is found to be untrue or misleading.

13.3 On termination of these Terms by the Supplier under clause 13.2, all licences granted by the Supplier under these Terms shall terminate immediately.

13.4 On expiry or termination of these Terms otherwise than on termination by the Supplier under clause 13.2, the Supplier shall promptly return all Materials to the Customer, and shall provide to the Customer an electronic copy of the Site (including all content on the Site). The Supplier shall provide such assistance as is reasonably requested by the Customer in transferring the hosting of the Site to the Customer or another service provider, subject to the payment of the Supplier's expenses reasonably incurred.

13.5 On expiry or termination of these Terms, all provisions of these Terms shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

#### **14. CHANGE CONTROL**

14.1 Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure.

14.2 The Supplier and the Customer shall discuss any change to these Terms (**Change**) proposed by the other and such discussion shall result in either:

- (a) a written request for a Change by the Customer; or
- (b) a written recommendation for a Change by the Supplier,

or, if neither the Customer nor the Supplier wishes to submit a request or recommendation, the proposal for the Change will not proceed.

14.3 Where a written request for a Change is received from the Customer, the Supplier shall, unless otherwise agreed, submit a Change control note (**CCN**) to the Customer within the period agreed between them or, if no such period is agreed, within five Business Days from the date of receipt of such request for a Change, or inform the Customer that the Supplier is not able to comply with such written request for a Change.

14.4 A written recommendation for a Change by the Supplier shall be submitted as a CCN direct to the Customer at the time of such recommendation.

14.5 Each CCN shall contain:

- (a) the title of the Change;

- (b) the originator and the date of the request or recommendation for the Change;
- (c) the reason for the Change;
- (d) the full details of the Change, including any specifications and user facilities;
- (e) the price, if any, of or associated with the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) the impact, if any, of the Change on other aspects of these Terms, including:
  - (i) the Charges;
  - (ii) the contractual documentation; and
  - (iii) staff resources;
- (h) the date of expiry of validity of the CCN (which shall not be less than [5] Business Days); and
- (i) provision for signature of the CCN by the Customer and the Supplier.

14.6 For each CCN submitted, the Customer shall, within the period of validity of the CCN as set out in clause 14.5(h):

- (a) allocate a sequential number to the CCN;
- (b) evaluate the CCN, and as appropriate either:
  - (i) request further information; or
  - (ii) approve the CCN; or
  - (iii) notify the Supplier of the rejection of the CCN; and
- (c) if approved, arrange for two copies of the approved CCN to be signed for and on behalf of the Customer and the Supplier. The signing of the CCN shall signify acceptance of a Change by both the Customer and the Supplier.

14.7 Once signed by the Customer and the Supplier in accordance with clause 14.6, the Change shall be immediately effective and the Customer and the Supplier shall perform their respective obligations on the basis of the agreed amendment.

## **15. FORCE MAJEURE**

Neither party shall be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for [8] weeks, the party not affected may terminate these Terms by giving [30] days' written notice to the affected party.

## **16. CONFIDENTIALITY**

16.1 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

16.2 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

16.3 The obligations set out in this clause 16 shall not apply to Confidential Information which the receiving party can demonstrate:

(a) is or has become publicly known other than through breach of this clause 16; or

(b) was in possession of the receiving party prior to disclosure by the other party; or

(c) was received by the receiving party from an independent third party who has full right of disclosure; or

(d) was independently developed by the receiving party; or

(e) was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

16.4 The obligations of confidentiality in this clause 16 shall not be affected by the expiry or termination of these Terms.

## **17. NOTICES**

17.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to its email address as notified to the other party.

17.2 Any notice or communication shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; or

(c) if sent by email, at 9.00am on the next Business Day after transmission.

17.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### **18. PUBLICITY**

All media releases, public announcements and public disclosures by either party relating to these Terms or their subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

#### **19. ASSIGNMENT**

Neither party may assign or transfer any of its rights or obligations under these Terms without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

#### **20. ENTIRE AGREEMENT**

20.1 These Terms constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms.

#### **21. THIRD PARTY RIGHTS**

No one other than a party to these Terms, their successors and permitted assignees, shall have any right to enforce any of its terms.

#### **22. VARIATION**

No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **23. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

**24. RIGHTS AND REMEDIES**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

**25. SEVERANCE**

25.1 If any provision or part-provision of these Terms 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 clause shall not affect the validity and enforceability of the rest of these Terms.

25.2 If any provision or part-provision of these Terms 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.

**26. GOVERNING LAW**

These Terms 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) is governed by and must be construed in accordance with the law of England and Wales.

**27. JURISDICTION**

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 these Terms or its subject matter or formation (including non-contractual disputes or claims).