

TERMS AND CONDITIONS OF SUPPLY OF SERVICES BY OTB (OUTSIDE THE BOX) LIMITED

1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

Conditions: these terms and conditions.

Contract: the contract created by the Customer's acceptance of a Quote for Services by the Supplier under clause 2.2.

Contract Price: the price for the provision of Services, as set out in the Quote, but subject always to the provisions as to variation of the price in clause 10 of these Conditions.

Contract Documents: these Conditions and the terms of the Quote accepted by the Customer.

Customer: the person, firm or company who purchases Services from the Supplier.

Customer's Manager: the Customer's manager for the Services, appointed in accordance with clause 8.1.

Deliverables: all documents, products and materials developed by the Supplier and delivered to the Customer pursuant to the provision of the Services in any form, including websites, computer programs, data, code, reports and specifications (including drafts).

Inappropriate Content: content with any of the qualities or characteristics listed in any of clause 8.2.

In-put Material: all documents, information, content and materials provided by the Customer relating to the Services, including computer programs, website content, data, reports and specifications.

Intellectual Property Rights: all patents, copyright and related rights, trade marks, domain names, rights in goodwill, registered and unregistered design rights, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Management Retainer: the management retainer for certain Services, as further described in clause 7.

Pre-existing Materials: all documents, information and materials provided by the Supplier relating to the Services which existed and belonged to the Supplier prior to the commencement of the Contract including computer programs, data, reports, specifications and electronic information.

Quote: a quote issued by the Supplier for the supply of Services.

Services: the services to be provided by the Supplier under the Contract as set out in the Quote together with any other services which the Supplier provides or agrees to provide to the Customer.

Service Time: time incurred, or to be incurred, by the Supplier in the provision of Services pursuant to a Management Retainer.

Sign-Off Form: the form to be signed by the Customer to confirm that the Deliverables have been provided to the Customer and are in accordance with the requirements of the Contract.

Supplier: OTB (Outside The Box) Limited.

- 1.2 References to clauses are to the clauses of these Conditions. Words in the singular shall include the plural and vice versa.
- 1.3 Where the words "include(s)", "including" or "in particular" are used in these Conditions, they are deemed to have the words "without limitation" following them and where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.

2 THE CONTRACT

- 2.1 The Supplier may issue a Quote following a request by the Customer to do so.
- 2.2 The Quote may be accepted by the Customer at any time during its period of validity by signing and returning a copy to the Supplier. By accepting the Quote the Customer appoints the Supplier to supply the Services to it in consideration of the Contract Price and subject to the terms of the Contract Documents.
- 2.3 These Conditions shall:
 - 2.3.1 apply to and be incorporated into the Contract; and
 - 2.3.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.4 Quotes are given by the Supplier on the basis that no Contract shall come into existence except in accordance with clause 2.2. Any Quote is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it. Quotes are based on the Supplier's current costs of production and are subject to amendment at any time. The appointment of the Supplier will commence upon receipt by the Supplier of a Quote signed by the Customer and will last until completion of the Services unless terminated in accordance with these Conditions.
- 2.5 In the event of any inconsistency between the terms of these Conditions and the Quote, the terms of the Quote will prevail.

3 SERVICES - GENERAL

- 3.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Quote. The Supplier will perform the Services with reasonable care and skill.
- 3.2 To the extent that the Quote provides no timescale for the completion of Services, the Supplier and the Customer may agree any such timescales in writing. Timescales for completion of the Services (whether set out in the Quote, or elsewhere, or otherwise agreed between the parties) are indicative only and are not binding on the Supplier, and time for completion of the Services shall not be of the essence of the Contract.
- 3.3 Where the Quote states that a deposit is to be paid by the Customer, the Supplier will not commence work on any element of the Services until any such deposit has been paid to it (unless otherwise agreed between the parties in writing).
- 3.4 The Supplier may include the statement "Designed by OTB (Outside The Box) Limited" and the Supplier's contact details in a discrete place on any Deliverable (including the home page of any Website), in a form to be agreed.
- 3.5 Any third party software supplied pursuant to the provision of the Services is supplied in accordance with the relevant licensor's standard terms, which the Customer hereby agrees to comply with.
- 3.6 Any Deliverable (including any website) will be deemed accepted by the Customer, and in accordance with the requirements of the Contract, upon either:
 - (i) commercial use of the Deliverable by the Customer (including any website going "Live"); or
 - (ii) the Customer signing the Sign-Off Form and returning the same to the Supplier.

Following which the Supplier will be entitled to immediately invoice the Customer for the outstanding balance of the Contract Price.

4 SERVICES – DOMAIN NAME REGISTRATION

- 4.1 The Supplier makes no representation whatsoever that any domain name the Customer wishes to acquire or register is capable of registration (whether in the Customer's name or otherwise). It is the Customer's responsibility to check the registration status of a domain name it wishes to acquire (and certain information in this regard may be found at <http://www.whois.co.uk>).
- 4.2 The registration and use of a domain name is subject to the terms and conditions of the relevant registry administrator, which the Customer undertakes to obtain copies of and comply with.

- 4.3 For the avoidance of any doubt, the appropriate Contract Price will be payable by the Customer even if the relevant registry administrator refuses to register the domain name requested by the Customer. Fees paid on the Customer's behalf to registry administrators are not refundable.
- 4.4 The Supplier may, if required to do so by any Court or competent authority, withhold, suspend or cancel the Customer's domain name, without any liability to the Customer. The Supplier may also take such action if it is threatened with litigation by a third party due to its association with the Customer's domain name and the Supplier, acting reasonably, considers that such action would be appropriate to avoid any threatened legal action against it. In each case, such actions may be taken by the Supplier without liability to the Customer.
- 4.5 Renewals of domain names take place one month prior to the domain's registered renewal date. The Supplier will ask the Customer in writing whether it wishes to instruct the Supplier to renew its domain name and requesting funds in order to do so. If the Customer either:
- (i) fails to respond to the Supplier's request; or
 - (ii) confirms that it does not want the Supplier to renew the domain name; or
 - (iii) fails to put the Supplier in funds to renew the domain name, the Supplier will not be liable for the Customer's loss of the domain name.

Notwithstanding the aforesaid, if the Supplier considers it appropriate (acting reasonably) the Supplier reserves the right to renew the domain name in the absence of proper, unambiguous instructions from the Customer, and to recover its costs of doing so from the Customer.

5 SERVICES – HOSTING

- 5.1 The Customer acknowledges that the Supplier has no control over any content placed on a website hosted by the Supplier (a "**Hosted Site**"), and the Supplier does not purport to monitor the content of a Hosted Site. The Supplier reserves the right to remove content from a Hosted Site where it reasonably suspects such content is Inappropriate Content. The Supplier will notify the Customer if it becomes aware of any allegation that content on the Hosted Site may be Inappropriate Content.

6 SERVICES – EMAIL MARKETING

- 6.1 Due to the nature of email marketing services, the Supplier cannot, and does not, warrant that there will be any minimum level of response to the email marketing Services.
- 6.2 In relation to email marketing, the Customer is referred in particular to clause 13 of these Conditions.

7 SERVICES – MANAGEMENT RETAINER

- 7.1 The Services may include a Management Retainer. A Management Retainer comprises the sale of access to certain Services which are paid for in advance, and at a discount to the Supplier's normal charges for such Services. Management Retainer Services include website development, planning and strategy services.
- 7.2 The Management Retainer will (unless otherwise agreed in the Quote or in writing between the parties) be for an initial term of 12 months, subject to the Customer's right to cancel at any time on written notice within 3 months of commencement of the Management Services ("**3 Month Initial Period**"). If the Customer cancels the Management Retainer within the 3 Month Initial Period, the Customer will only be charged for Service Time applicable to that 3 month period (whether that Service Time has been utilised by the Customer or not). After the 3 Month Initial Period, the Customer may cancel the Management Retainer at any time upon not less than 3 months notice in writing to the Supplier (such notice to expire at the end of any calendar month). At the anniversary of the commencement of the initial 12 month period, and on each subsequent anniversary, the Management Retainer will be automatically renewed for a further 12 months unless either party gives notice to the other in writing that the Management Retainer is not to be renewed, such notice to be served not less than 3 months prior to the next following anniversary of commencement of the Management Retainer. For the purposes of this clause, the Management Retainer will be deemed to have commenced upon the date of the Customer's execution of a Quote pursuant to which a Management Retainer has been provided to it.
- 7.3 The Management Retainer will provide for 3 hours of Service Time per calendar month, unless otherwise agreed in the Quote. The Management Retainer will not provide for any less than 3 hours of Service Time per calendar month.
- 7.4 Subject to clause 7.3, at any time during the term of the Management Retainer, the Customer may request to increase or decrease the amount of Service Time per calendar month, on not less than 4 weeks' notice. Any such requested Service Time change will take effect at the start of the next calendar month following expiry of such notice.
- 7.5 For the avoidance of doubt, the Contract Price relating to the Management Retainer is not refundable in any circumstances, regardless of whether or not the Customer utilises the Supplier Time.
- 7.6 If the amount of time the Supplier has spent in performing Services for the Customer in any calendar month exceeds the applicable Service Time for that month, the excess time will be charged to the Customer at the applicable standard rates for such work set out in the Supplier's rate sheet (which can be accessed on the Supplier's website at www.outsidethebox.co.uk, or upon request from the Supplier).

- 7.7 The price of Service Time under the Management Retainer will be fixed for a period of 12 months from the commencement of the Management Retainer. Thereafter, the Supplier may increase the price of Service Time at any time upon not less than 3 months notice in writing to the Customer. At any time during such 3 month notice period, the Customer may terminate the Management Retainer upon notice in writing to the Supplier (such termination to take effect at the end of the month in which notice of termination is served). If the Customer fails to give notice to terminate with the said 3 month period, it will be deemed to have accepted the Service Time price increase, and such increased prices will apply to the Management Retainer Services as from expiry of the Supplier's notice of price increase.
- 7.8 The Supplier will invoice the Customer for the Contract Price relating to the Management Retainer on a [monthly/quarterly/yearly] basis, in advance.

8 CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
- 8.1.1 co-operate with the Supplier in all matters relating to the Services and appoint the Customer's Manager, who shall have the authority contractually to bind the Customer on matters relating to the Services;
 - 8.1.2 provide, for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, such access to the Customer's premises, office accommodation, data, servers and other facilities as may be reasonably required by the Supplier;
 - 8.1.3 deliver or otherwise provide, in a timely manner, such In-put Material and other information as the Supplier may request or reasonably require in order to provide the Services and ensure that such In-put Material is accurate in all respects;
 - 8.1.4 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services and the use of In-put Material before the date on which the Services are to start;
 - 8.1.5 ensure that any In-put Material to be used by the Supplier in performing the Services will not infringe any applicable law or third party Intellectual Property Rights.
- 8.2 The Customer warrants that all materials, data and other information used by it in relation to any Deliverable (including In-put Material, material on any website created or hosted by the Supplier, or any website accessible under a domain name acquired by the Supplier pursuant to delivery of the Services, and in any marketing email distributed by Supplier), other than material provided by the Supplier:
- 9.2.1 will not contain any obscene, defamatory, abusive, threatening or harassing material, or any pornographic, seditious or blasphemous material or material liable to incite racial or religious hatred;

- 9.2.2 will not breach any legislation or applicable law;
 - 9.2.3 will not infringe any third party Intellectual Property Rights;
 - 9.2.4 will not promote or be used in connection with any illegal or undesirable activities;
 - 9.2.5 will not contain any virus, Trojan horse, or other code that could damage the Supplier's or anyone else's computer equipment;
 - 9.2.6 will not be used to send any unsolicited commercial communications or communications breaching any law or third party rights.
- 8.3 The Customer indemnifies the Supplier, and will keep the Supplier indemnified, against all damages, costs and losses arising from any breach by the Customer of either of clauses 8.1.5 or 8.2 above.
- 8.4 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees (including failure to deliver In-put Material to the Supplier in a timely fashion), the Supplier shall not be deemed to be in breach of the Contract and will not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 8.5 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract subject to the Supplier confirming such costs, charges and losses to the Customer in writing. In particular, and without prejudice to the aforesaid, the Supplier reserves the right to charge a fee of £150 plus VAT in circumstances where the Customer has failed to deliver In-put Material by the deadline agreed between the parties and the Supplier has had to change its employees' work schedules to accommodate the resulting delay.

9 CHANGE CONTROL

- 9.1 If at any time the Customer requests a change to the scope or execution of the Services the Customer will provide such details of the requested changes to the Supplier as the Supplier may require and, if the Supplier is willing and able (in its absolute discretion) to provide such amended Services, the Supplier will issue an amended Quote setting out the amended Services and an amended Contract Price.
- 9.2 If the Customer wishes the Supplier to proceed with the change, it shall sign and return to the Supplier the amended Quote, whereupon the amended Quote will become the applicable Quote for the purposes of these Conditions. For the avoidance of doubt, the Supplier will have no obligation in relation to any amended Quote (or any requested

amendments to the Services) unless and until an amended Quote is signed by the Customer and returned to it in accordance with the provisions of this clause.

- 9.3 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable technical or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it provided that such changes do not materially affect the nature or quality of the Services and, where practicable, it will give the Customer reasonable notice of any change, and will submit to the customer a duly amended Quote for signature by the Customer.

10 CHARGES AND PAYMENT

- 10.1 The Customer will pay the Contract Price in consideration for the provision of the Services.
- 10.2 The price set out in each Quote is based on an estimate of the amount of time that will be taken by the Supplier's staff in completing the Services, at a minimum rate of £75 per hour per person. Where the Supplier can show that the cost of the cumulative time incurred by its staff in working on the Services has exceeded the original Contract Price set out in the Quote by more than 15%, the Supplier reserves the right to re-issue the Quote with an amended Contract Price, which will be deemed accepted by the Customer (and will become the Quote and the Contract Price for the purposes of these Conditions) if the Customer accepts any element of the Services or the Deliverables from the Supplier after receipt by it of the amended Quote.
- 10.3 A deposit will be required from the Customer if so requested in, and upon the terms set out in, the Quote. The deposit will not be refunded to the Customer under any circumstances. The Contract Price may be paid in instalments if provision for payment by instalments is made in the Quote. The Supplier reserves the right to invoice the Customer for the acquisition of domain names and web hosting services at any time following either acquisition of the domain name or commencement of the hosting services (as applicable). In the absence of any such terms as set out above, the Supplier will invoice the Customer for the Contract Price on or at any time after completion of the Services. If the duration of the Services is greater than one month, the Supplier reserves the right to submit interim invoices every 30 days.
- 10.4 The Supplier will be entitled to charge for any Deliverable which is complete except for the input of further In-put Material, where the Customer has unreasonably delayed providing such material.
- 10.5 The Contract Price excludes:
- 10.5.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of

services (other than the Services) reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier; and

10.5.2 VAT, and

such expenses, materials and third party services shall be invoiced by the Supplier, and VAT will be added by the Supplier to all its invoices to the Customer, and the Customer will duly pay the same in accordance with the provisions of this clause.

10.6 The Supplier reserves the right to increase the Contract Price at any time to reflect:

10.6.1 an increase in the cost of either disbursements to be paid on the client's behalf (e.g. for the acquisition of domain names) or increases in the cost to the Supplier of goods or services from third party suppliers which are essential to the proper performance of the Services; and/or

10.6.2 the Supplier's time and costs of rectifying any hacker intrusion (or any other unlawful or uninvited third party intrusion) into or affecting any Deliverable or Hosted Site of the Customer, which (in relation to the Supplier's time) will be charged at the Supplier's standard hourly rate from time to time;

and any such increase will be deemed accepted by the Customer if the Customer accepts any element of the Services or the Deliverables from the Supplier after notification to it of such increase by the Supplier.

10.7 The Customer shall pay in pounds sterling each invoice submitted to it by the Supplier, in full and in cleared funds, and without any deduction or set off within 30 days of receipt (or within such earlier timescale as may be set out in the Quote or agreed between the parties) and in accordance with the provisions of this clause.

10.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

10.8.1 charge interest on such sum from the due date for payment at the applicable rate of interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

10.8.2 suspend some or all of the Services until payment has been made in full.

For the avoidance of any doubt, where the Customer fails to pay the Supplier on the due date, the Supplier may suspend any Services which it is providing at any time to the Customer, regardless of whether or not the Customer is in arrears in relation to the suspended Services. The Supplier's rights under this clause expressly include the right to either suspend the Customer's internet access, or the availability of any of its websites, and the right to remove any functionality on any of the Customer's websites or systems, where such functionality has been provided by the Supplier's work. The Supplier will not be liable for any loss, costs or damages incurred by the Customer arising from the exercise of any of the Supplier's rights in or pursuant to this clause.

10.9 Time for payment shall be of the essence of the Contract.

10.10 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 As between the Customer and the Supplier:

- (a) All Intellectual Property Rights in the In-put Material remains vested in the Customer;
- (b) All Intellectual Property Rights in the Pre-existing Materials remains vested in the Supplier;
- (c) All Intellectual Property Rights in domain names procured for the Customer pursuant to the provision of the Services will, following receipt by the Supplier of the full Contract Price, vest in the Customer;
- (d) Subject to sub-clauses (a), (b) and (c) above, and the remaining provisions of this sub-clause (d), all Intellectual Property Rights created or used in the provision of the Services (including code used within any website) will vest in the Supplier (subject always to clause 11.2 below). Intellectual Property Rights in graphics used in the front end of any website created pursuant to provision of the Services will, following receipt by the Supplier of the full Contract Price, vest in the Customer, but the Customer acknowledges that the Supplier may re-use elements or ideas that it has developed in providing the Services for any other client or customer (and the Customer hereby grants the Supplier a licence to do so), or may in the provision of the Services re-use elements or ideas that it has developed for other clients. However, the Supplier will not at any time use any In-put Material, or any other Intellectual Property Rights of the Customer or material used in any Deliverable which exclusively identifies the Customer, in relation to any other client of the Supplier.

11.2 Subject to receipt by the Supplier of the full Contract Price, the Supplier licences all of its Intellectual Property Rights in the Deliverables to the Customer free of charge and on a non-exclusive, worldwide basis, to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services.

11.3 Where the provision of Services requires the use by the Supplier of any Intellectual Property Right of the Customer, the Supplier will only use such Intellectual Property Rights strictly to the extent as is necessary for the performance of the Services, and the Customer hereby grants the Supplier such licence to do so.

11.4 Where the Services have included the design of the Customer's website, the Customer hereby grants the Supplier the right to provide a web link from the Supplier's website to

the Customer's website. The Customer permits the Supplier to refer to the Customer as one of its clients in any of the Supplier's promotional material.

12 CONFIDENTIALITY

12.1 Any party (the "Receiving Party") 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 it by the other party (the "Disclosing Party"), its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business or its products which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or sub-contractors are made aware of the confidential nature of such confidential material.

13 DATA PROTECTION

13.1 In this clause, the words "Personal Data" and "Data Controller" have the same meaning given in the Data Protection Act 1998 (the "**Act**").

13.2 The Customer is the Data Controller under the provisions of the Act in respect of all Personal Data provided by it or on its behalf to the Supplier in relation to email marketing Services.

13.3 The Customer warrants that:

13.3.1 it will at all times comply in all respects with the provision of the Act; and

13.3.2 in respect of all Personal Data disclosed by the Customer to the Supplier in order for the Supplier to provide email marketing Services, (i) the Customer has obtained all relevant consents and taken all necessary steps required by the Act to enable the Supplier to lawfully perform the Services, and (ii) such Personal Data does not include details of any person who has either opted out or has objected to the receipt of direct marketing material from the Customer and/or any third party.

13.4 To the extent that the Supplier processes Personal Data on behalf of the Customer, the Supplier warrants that it shall act only on instructions from the Customer.

13.5 Personal Data relating to the Customer or the Customer's employees acquired by the Supplier will be processed by or on behalf of the Supplier in connection with the Services and may be used by the Supplier for marketing other similar services to the Customer.

14 LIMITATION OF LIABILITY

14.1 This clause 14 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

14.1.1 any breach of the Contract;

14.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and

14.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

14.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

14.3.1 for death or personal injury resulting from negligence; or

14.3.2 for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by the Supplier.

14.4 Subject to clauses 14.2 and 14.3:

14.4.1 The Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, business, anticipated savings, goods, contract, use or loss or corruption of data, software or information, or for depletion of goodwill or any special, indirect or consequential or pure economic loss, costs, damages, charges or expenses.

14.4.2 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Services shall be limited to the price paid by the Customer for the Services.

14.4.3 Any recommendations or advice issued by the Supplier to the Customer in relation to the Services or the Deliverables is to be accepted or acted upon by the Customer entirely at its own risk, and the Supplier will not be liable for any loss whatsoever, and howsoever arising, to the Customer arising from the Customer's reliance upon such advice or recommendations.

14.4.4 The Supplier shall not be liable for any imperfect work or errors in the Deliverables caused by defects or errors in, or unsuitably of, any In-put Materials provided by or on behalf of the Customer.

14.4.5 The Supplier shall not be liable for any suspension or loss of the Customer's domain name registration, or any interruption to any websites accessed by the Customer's domain name, or any refusal of a relevant registry administrator to register a domain name, unless such loss is due to the

negligence or wilful neglect of the Supplier. The Supplier will not be liable for any acts or omissions of the registry administrator of the Customer's domain name (or to whom the Supplier may apply for a domain name).

14.4.6 The Supplier shall not be liable for any damage, costs or losses arising to the Customer from any hacker intrusion (or any other unlawful or uninvited third party intrusion) into or affecting any Deliverable or Hosted Site of the Customer, provided that the Supplier has used reasonable industry-standard endeavours to prevent any such intrusion.

15 TERMINATION

15.1 Without prejudice to any other rights or remedies which the parties may have, any party (the "Terminating Party") may terminate the Contract immediately on giving notice to the other (the "Breaching Party") if:

15.1.1 the Breaching Party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or

15.1.2 an order is made or a resolution is passed for the winding up of the Breaching Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order against the Breaching Party; or

15.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Breaching Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Breaching Party, or notice of intention to appoint an administrator is given by the Breaching Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

15.1.4 a receiver is appointed of any of the Breaching Party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Breaching Party; or

15.1.5 the Breaching Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

15.1.6 the Breaching Party ceases, or threatens to cease, to trade; or

15.1.7 the Breaching Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

15.2 On termination of the Contract for any reason:

15.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices plus any interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

- 15.2.2 the Customer shall, within a reasonable time, return all of the Supplier's equipment and Pre-existing Materials. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them; and
- 15.2.3 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

16 FORCE MAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing the Services by acts, events, omissions or accidents beyond its reasonable control, including 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, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

17 GENERAL

- 17.1 A waiver of any right under the Contract Documents is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 17.2 If any provision (or part of a provision) of the Contract Documents are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 17.3 The parties agree, in the circumstances referred to in clause 17.2, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision in the Contract Documents shall be suspended while an attempt at such substitution is made.
- 17.4 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to its subject matter other than as expressly set out in the Contract Documents.
- 17.5 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

- 17.6 Nothing in the Contract Documents is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other.
- 17.7 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 17.8 Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Quote (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday, except bank holidays in the UK (a "**Business Day**")), at 9.00 am on the first Business Day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party (as evidenced by a successful fax transmission sheet from the sender's fax machine) or, in the case of post, that the envelope containing the notice was properly addressed and posted.
- 17.9 Subject to clause 9, no variation of any of the Contract Documents shall be valid unless it is in writing and signed by each of the parties.
- 17.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract.

Levi Solicitors LLP
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