

**WEBSUSHI LIMITED  
TERMS AND CONDITIONS OF BUSINESS**

**1. Definitions**

1.1 In this Agreement the following words and expressions shall have the meaning set out below and other capitalised words shall have the meaning set out in the Cover Page or any Schedule:

"**Acceptance**" means the passing of the acceptance tests pursuant to clause 2, and "**Accepted**" shall be construed accordingly;

"**Client Content**" the information, data and software provided to be provided to the Developer by the Client for incorporation into the Project;

"**Error**" any material failure of the Project or part to comply with the Specification;

"**IPR**" means any and all registered and unregistered copyright patents, design rights, database and compilation rights, Marks (and related goodwill), trade secrets and other intellectual property rights, howsoever arising and in whatever media, and any applications for their protection or registration and all renewals and extensions anywhere in the world;

"**Marks**" means any and all names, brands, logos, trademarks, service marks, trade names and domain names;

"**Order Form**" means the form supplied with these terms and conditions;

"**Password**" means the code/s which facilitate access to the Project and its configuration;

"**Project**" means the internet related project to be designed, implemented and tested by the Developer, and further described by the Specification;

"**Specification**" the details provided on the Order Form, including related documents.

**2. Development and Acceptance**

2.1 Subject to the payment of the Fees and the provision of Client Content, the Developer agrees to design and implement the Project in accordance with the Specification, and the other provisions of this Agreement.

2.2 The Developer shall carry out its obligations with reasonable skill, care and attention

2.3 The Developer shall notify the Client when the Project or any agreed part is available for acceptance testing. Unless otherwise provided, as soon as reasonably practicable, the Client shall notify the Developer of any Errors in that version of the Project.

2.4 If the Client notifies the Developer of any Errors, the Developer shall endeavour to correct such Errors and clause 2.2 shall apply again to such Project or part.

2.5 If the Client does not notify Developer of any Errors within 28 days, then the Project or the relevant part shall be deemed to be Accepted.

**3. Amendments to Specification**

3.1 The parties agree that amendments to the Specification can only be made and agreed in writing. If at any time the Client wishes to amend the Specification or any aspect of the implementation of the Project, the Client shall provide the Developer with written details together with such further information as the Developer may require in order to assess the proposed amendments with a view to the parties entering into a further agreement to cover such amendments. Minor amendments will be incorporated into this Agreement at the sole discretion of the Developer but anything more substantial will be the subject of a new contract between the parties.

**4. Client Obligations**

4.1 The Client agrees:

(a) that this Agreement does not include the provision of equipment, telecommunications or other services necessary to host or access the Project and the Client is responsible for providing and maintaining suitable equipment, telecommunications and support services to facilitate access to the Project;

(b) to keep all Passwords secret at all times; and

(c) to provide Client Content as expressly set out in the Specification and comply with any of its other obligations under the Specification and to provide any additional information requested by the Developer. Failure to reply or to provide such information as requested will amount to a material breach for the purpose of clause 12.3(a).

**5. Payment**

5.1 The Developer shall invoice the Client (to include any stage payments specified in the Order Form) and the Client shall pay the Fees and any other charges due to the Developer on delivery of the invoice. All Fees and other charges are subject to VAT.

5.2 If any sum due to the Developer remains outstanding then, without prejudice to any other rights and remedies of the Developer, such sums shall attract interest at the then current interest rate applicable pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 or, if higher or if no such rate exists, of Barclays Bank plus two percent, before and after judgement, from the invoice date until payment is made in full.

5.3 The Developer shall be entitled to withdraw all future services due under this Agreement or any other agreement between the parties, including web and email hosting services, in the event of arrears of payment of more than 14 days.

5.4 Pending payment to the Developer in full of all sums due from the Client, the Developer will reserve possession of any documents and title to any aspect of the Project that would otherwise be the property of the Client. For the avoidance of doubt, all Project papers and any IPR that will become the property of the Client under this Agreement shall remain the property of the Developer pending payment of all sums due from the Client to the Developer whether or not under this Agreement.

**6. Warranties and Indemnities**

6.1 Each party warrants to the other

6.1.1 that it has the full right, power and authority to enter into and perform this Agreement and has not entered into any arrangement which in any way conflicts with this Agreement or inhibits, restricts or impairs its ability to perform its obligations under this Agreement.

6.1.2 that it has sufficient rights (including IPR) in the items to be delivered under this Agreement to enable the rights set out in this Agreement to be enjoyed and the various obligations to be fulfilled and that it has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for the full implementation of this Agreement.

6.2 The Client warrants that the Client Content is adequate to enable the Developer to carry out its obligations under this Agreement.

6.3 Except as expressly provided this Agreement, each party expressly disclaims any further representations, warranties, conditions or other terms, express or implied, by statute, collaterally or otherwise, including but not limited to implied warranties, conditions or other terms of satisfactory quality, fitness for a particular purpose or reasonable care and skill.

**7. IPR**

7.1 The copyright in any methodologies and technologies provided by the Developer for the Project shall remain in the Developer or its licensors.

7.2 The Developer agrees to grant the Client, a royalty-free, worldwide, non-exclusive licence to use and modify any methodologies and technologies provided by the Developer in its standard terms.

7.3 The Developer waives any moral rights as defined in sections 77 to 83 of the Copyright, Designs and Patents Act 1988 subsisting in any copyright work created for the Client under this Agreement.

7.4 Nothing in this Agreement shall be taken to prevent the Developer from using any expertise acquired or developed during the performance of this Agreement in the provision of services for other companies or on its own behalf.

**8. Indemnities and Insurance**

8.1 Each party shall indemnify and keep the other party fully and effectively indemnified on demand against any liability, damage, expense, claim or cost (including reasonable legal costs and expenses) suffered by the other party as a result of any breach by the first party of the warranty relating to IPR set out in clause 6 of this Agreement.

8.2 The Developer must have in force and maintain with a reputable insurance company professional indemnity insurance for at least £1,000,000.

## 9. Limitation of Liability

- 9.1 Save as provided in clauses 8.1, 9.2 and 9.3, neither party shall be liable in contract, tort (including negligence) or otherwise arising in connection with this Agreement for: (i) consequential, indirect or special loss or damage; or (ii) any loss of goodwill or reputation; or (iii) any economic losses (including loss of revenues, profits, contracts, business or anticipated savings) in each case, even if the relevant party has been advised of the possibility of such loss or damage and howsoever incurred. Further, the Developer will not be liable for any overrun beyond the Anticipated Delivery Date and any such date is an estimate only and not a contractual term nor for any withdrawal of services triggered by the Client's breach of this Agreement including non-payment of invoice.
- 9.2 Save for clauses 8.1 and 9.3, both parties agree that the maximum liability of either party in contract, tort (including negligence) or otherwise arising in connection with this Agreement shall be limited to their respective insurance limits in place.
- 9.3 Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees acting in the course of their duties.

## 10. Force Majeure

- 10.1 Neither party will be liable for any failure or delay in performing its obligations under this Agreement to the extent that this failure or delay is the result of any cause or circumstance beyond the reasonable control of that party including acts of god, war, civil commotion or industrial dispute and that failure could not have reasonably been prevented or overcome. If either party is prevented from performing its obligations for a period exceeding three (3) months due to Force Majeure then the other party may terminate this Agreement on one month's written notice.

## 11. Confidentiality and Data

- 11.1 During the Term of this Agreement and for two (2) years thereafter, each party will treat as confidential all information that it obtains concerning, but not limited to, the business, finances, technology and affairs of the other, ("**Confidential Information**").
- 11.2 Each of the parties will use at least the same degree of care (and not less than a reasonable degree of care) it uses to prevent the disclosure of its own confidential information of like importance, to prevent the disclosure of Confidential Information of the other party.
- 11.3 Each party will promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.
- 11.4 The provisions of this clause 11 shall cease to apply to: (i) information that has come into the public domain other than by breach of this clause or breach of any other duty of confidence; (ii) information that is obtained from a third party without breach of this clause or breach of any other duty of confidence; and (iii) information that is required to be disclosed by a regulatory or government body or court of competent jurisdiction with power to compel the disclosure.
- 11.6 Each party will comply with its obligations pursuant to the Data Protection Act 1998.

## 12. Term/Termination

- 12.1 The Agreement shall commence on the Commencement Date and shall continue until the Project has been accepted in accordance with Clause 2 and the final invoice paid unless and until terminated in accordance with clause 12.2 or 12.3.
- 12.2 Either party may terminate this Agreement on 90 days prior written notice, save that any notice served by the Developer will not become effective until after the Project has been accepted.
- 12.3 Each party shall have the right to terminate this Agreement immediately on written notice in the event that the other:
- commits any material breach of the terms of this Agreement (including failure to pay any invoice due to the Developer) which, in the case of a breach capable of remedy, is not remedied within thirty (30) days of service of a notice specifying the breach and stating the intention to terminate the Agreement if not remedied;
  - holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986);
  - has a receiver, administrator, or other encumbrancer take possession of, or appointed over, or has any distress,

execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; or

- ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 12.4 Forthwith upon the termination (for whatever reason) or expiry of this Agreement, each party shall return to the other party all licensed materials and Confidential Information, and all copies in whole or part, of the other party or if requested by the other party, shall destroy them and certifying in writing to the Licensor that they have been destroyed.
- 12.5 Termination or expiry of this Agreement shall be without prejudice to any rights, liabilities or remedies of a party accrued before termination (including payment to the Developer for all work done before termination is effective), nor shall it affect any provision of this Agreement which is expressly intended to come into or continue in force after termination or expiry.
- 12.6 Upon termination, the Client will take possession of any documents and title to any aspect of the Project completed during this period following payment.

## 13. General

- 13.1 Nothing in this Agreement shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties nor shall it be deemed to grant any authority not expressly set out in the Agreement or create any agency between the parties.
- 13.2 Each party confirms that this Agreement sets out the entire agreement and understanding between the parties and that it supersedes all previous agreements, arrangements and understandings between them relating to the subject matter of the Agreement. Each party confirms that it has not relied upon any statement, representation or understanding that is not an express term of this Agreement and shall not have any remedy in respect of any statement, representation or understanding which is not an express term unless made fraudulently.
- 13.3 No failure or delay by any party in exercising any right, power or remedy under this Agreement will operate as a waiver of that or any other right, power or remedy, nor will any single or partial exercise by either party of any right, power or remedy preclude any further exercise of any other right, power or remedy.
- 13.4 To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that provision shall be deemed not to be a part of this Agreement, and it shall not affect the validity, lawfulness or enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 13.5 Any times, dates or periods specified in the Agreement may be extended or altered by agreement in writing between the parties. However, time shall not be of the essence, except where it is expressly stated to apply.
- 13.6 Nothing in this Agreement shall create or confer any rights or other benefits, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, in favour of any person other than the parties to this Agreement.
- 13.7 Each party shall, at the cost and expense of the other party, use all reasonable endeavours to do all such further acts and things and execute or procure the execution of all such other documents as that party may from time to time reasonably require, for the purpose of giving that party the full benefit of the assets, rights and benefits to be transferred to the other party under this Agreement.
- 13.8 Each party shall not be entitled to assign, transfer, charge or licence the whole or any part of its rights and/or obligations under this Agreement to any third party without consent of the other party.
- 13.9 This Agreement shall be construed in accordance with the laws of England and each party hereby irrevocably submits to the non-exclusive jurisdiction of the courts of England.
- 13.10 The rights and remedies of the parties under this Agreement are cumulative and in addition to any rights and remedies provided by law. Any variation to this Agreement must be in writing and agreed by the parties. This Agreement may be executed in counterpart.