

AKIRA STUDIO LIMITED

TERMS & CONDITIONS

1 DEFINITIONS

1.1 In this Agreement the following words and expressions shall have the following meanings:

"Akira" means Akira Studio Limited, company number 05694464, whose registered office is at Unit 8A Buriton Business Park, Petersfield, Hampshire GU32 3NJ, United Kingdom.

"Customer" means the customer named on the Order;

"Hosting Service" means the hosting service, if any, specified in the Specification;

"Intellectual Property Rights" means all intellectual and industrial property rights of whatever nature anywhere in the world and all rights pertaining thereto, whether recorded or registered in any manner or otherwise, including without prejudice to the generality of the foregoing patents, trade marks, registered designs (including applications for any of the same), copyright, design rights, semi-conductor topography rights, database and software rights, mask works, trade secrets, know-how, business names, trade names, brand names, domain names and all other legal rights anywhere in the world protecting such intangible property;

"the Price" means the sums to be paid by the Customer to Akira as specified in the Specification;

"the Project" means the design and delivery of the Website and the delivery by Akira of the other goods and services, if any, pursuant to this Agreement;

"the Specification" means the specification set out or referred to in the Order;

"the Order" means the order to which these terms are attached;

"the Project Manager" means the project manager appointed by Akira pursuant to clause 4.1;

"the Project Co-ordinator" means the project co-coordinator appointed by Akira pursuant to clause 4.2;

"the Timetable" means the dates, if any, specified in the Order for the completion of the Project and of parts of the Project;

"URL" means a universal resource locator on the internet; and

"the Website" means the website to be designed or modified by Akira for the Customer.

1.2 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.3 The headings of the clauses of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

2 DUTIES OF AKIRA

2.1 In consideration of the payment by the Customer of the Price and subject to the terms and conditions of this Agreement, Akira agrees:

2.1.1 to develop and deliver the graphical, technical and navigational design ("the Website Design") as set out in the Specification;

2.1.2 to create and deliver the pages of the Website containing all text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials to be featured, displayed or used in or in relation to the Website ("the Web Pages") as set out in the Specification; and

2.1.3 to advise the Customer in relation to the Website Design and the production of the Web Pages; and

2.1.4 to carry out any hosting, graphic design and other work referred to in the Specification.

2.2 Akira undertakes to carry out its obligations under Clause 2.1 in accordance with the Timetable.

2.4 Akira shall provide the hosting service, if any. Subject to that, Akira is not required to provide advice upon or take any action in relation to the hosting of the Website or of any website.

3 DUTIES OF CUSTOMER

3.1 The Customer shall deliver to Akira all drafts, concepts, text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials and information required by Akira in relation to the performance of Akira's obligations under this Agreement.

3.2 The Customer shall ensure that the Project Co-ordinator carries out the duties of the Project Co-ordinator referred to in clause 4.

4 PROJECT MANAGEMENT

4.1 Akira shall nominate a Project Manager who shall respond to the Customer's enquiries when reasonably required by the Customer to do so.

4.2 The Customer shall nominate a Project Co-ordinator who shall cooperate with the Project Manager and shall provide all information and documentation required by Akira for the proper performance of the Project.

4.3 The Project Manager and the Project Co-ordinator shall meet to review the progress of the Project at least once per week.

4.4 If the Project Manager or the Project Co-ordinator is not available to perform his duties under this Agreement, Akira or the Customer (as the case may be) shall report the fact and its expected duration to the other party. If the Project Manager's absence continues for more than 3 consecutive working days Akira shall make available an alternative suitably qualified and experienced Project Manager. If the Project Co-ordinator's absence continues for more than 3 consecutive working days, the Customer shall nominate a replacement Project Co-ordinator who shall be sufficiently qualified and experienced.

4.5 If the Customer shall fail to provide to Akira any materials or information pursuant to clause 3.1 within 30 days of a request from Akira to do so Akira may, in addition to its other remedies, cease work on the Project pending receipt of such materials or information and may forthwith render an invoice to the Customer for the work done on the Project to date. Where the Price or any part of the Price of the Project is a fixed sum the invoice may include a sum for such proportion of the fixed part of the Price as reflects the proportion of such part of the Project as has been completed, provided that the invoice shall give credit for any sum previously paid by the Customer to Akira pursuant to clause 8.4.

5 ALTERATIONS

5.1 The Customer may at any time request alterations to the Specification by notice in writing to Akira.

5.2 On receipt of the request for alteration Akira shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing whether Akira is willing to implement the change and, if so, of the effect of the alteration, if any, on the Price, the Timetable and any other terms already agreed between the parties. For the avoidance of doubt, the Customer's requirement that Akira carry out amendments or modifications or corrective or remedial work pursuant to Clause 6 shall not constitute an alteration within the meaning of this Clause.

5.3 Where Akira gives written notice to the Customer agreeing to perform an alteration on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice, advise Akira by notice in writing whether or not it wishes to implement the alteration. If it does so this Agreement shall be deemed to have been amended so as to include the alterations and thereafter the parties shall perform this Agreement upon the basis of such amended terms.

6 TESTING

6.1 On completion of the Website Akira shall provide the Customer with access to a temporary URL where the Website can be viewed and tested. If the Project Co-ordinator considers that the Website does not comply with the Specification he shall promptly notify Akira in writing of the ways in which it does not so comply. On receipt of this notice Akira shall without charge to the Customer investigate and modify the Website (including making such corrections or enhancements to the software used as may be necessary) to ensure that it complies with the Specification. On completion of such investigation and, if any, modification, the process referred to in this clause 6.1 shall be repeated until the Website complies with the Specification. In this clause 6 "successful completion" means the earliest time at which the Website complies with the Specification.



6.2 Where the Project Co-ordinator notifies Akira pursuant to Clause 6.1 that the Website does not comply with the Specification, the Customer shall be liable to pay to Akira the costs, at Akira's then current prices, of the work carried out by Akira as a result of that notification.

6.3 Upon successful completion:

6.3.1 the Customer shall sign Akira's acceptance form, confirming that Akira has completed the Project in accordance with this Agreement;

6.3.2 Akira shall, at the Customer's request, either upload the Website to the hosting service selected by the Customer or deliver to the Customer the object code of all software necessary for the Website to operate; and

6.3.3 Akira may, subject to the provisions of clause 8, render its invoice for all outstanding sums due to it.

6.4 Notwithstanding any provisional acceptance or use of the Website by the Customer, final acceptance of it shall not occur until successful completion and shall be without prejudice to any of the Customer's rights set out in this Agreement.

6.5 Risk of loss or damage of any kind to the Website, the software used, the content or the documentation related to it shall pass to the Customer only upon successful completion.

7 HOSTING

7.1 Akira warrants that the Hosting Service will make the Website available on the internet for not less than 95% of each calendar year.

7.2 Unless otherwise stated in the Specification, the Hosting Service shall be provided for a period of one year from the date on which the Website is first made available on the internet by Akira.

8 PRICE AND PAYMENT

8.1 The Customer shall pay Akira the Price. The Price is exclusive of VAT.

8.2 Where the Price or any part thereof is an hourly rate, the amount payable by the Customer to Akira shall be calculated by reference to the amount of time spent upon the work required to discharge Akira's obligations under this Agreement other than any work in respect of which a fixed price is specified. Akira shall be entitled to render an invoice in respect of work done under an hourly rate at the end of each month.

8.3 The Customer shall make payment to Akira within 7 working days of receipt of an invoice from Akira, all payments to be made in pounds sterling.

8.4 Where the Price or any part thereof is a fixed price, half of the Price or of that part of the Price, as the case may be, shall be payable by the Customer to Akira upon entering into this Agreement and the balance shall be payable upon completion of the work to which the fixed price relates.

8.3 Akira reserves the right to alter its price list at any time.

9 INTELLECTUAL PROPERTY RIGHTS

9.1 The Intellectual Property Rights in all material supplied by the Customer to Akira in the course of the Project shall, as between the Customer and Akira, belong to the Customer. The Customer grants to Akira a royalty-free, world-wide, non-exclusive licence to use that material for the purposes of the Project only.

9.2 The Intellectual Property Rights in all material, including without prejudice to the generality of the foregoing computer software and data, created by Akira pursuant to this Agreement and/or in the course of the Project shall belong to Akira. Akira grants to the Customer a royalty-free, world-wide, non-exclusive licence to use that material solely for its own internal business purposes.

9.3 The Customer acknowledges that any third party computer software which may be used in or in relation to the Project and/or the Website may be subject to the terms of that third party and the Customer agrees to abide by any such terms.



10 WARRANTIES

10.1 Akira warrants that the Website will comply with the Specification.

10.2 Akira warrants and represents to the Customer that all works created by Akira in the course of the Project will, unless otherwise stated in this Agreement, be original work and not subject to any intellectual property or other rights of any third party and that the Customer's use of the Website shall not infringe the intellectual property rights of any third party.

10.3 The Customer warrants and represents to Akira that all material supplied to Akira for inclusion in or use in relation to the Website will not infringe the intellectual property rights of any third party and the Customer shall indemnify Akira against any loss, damages, costs, expenses or other claims arising from any such infringement.

10.4 All conditions, terms, representations and warranties that are not expressly stated in this Agreement, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, save for the statutorily implied terms as to title.

11 LIMITATION OF LIABILITY

11.1 Nothing in these terms and conditions shall exclude or limit Akira's liability for death or personal injury resulting from Akira's negligence or that of its employees, agents or sub-contractors, nor for liability for fraud.

11.2 The entire liability of Akira to the Customer in respect of any breach of this Agreement or of any claim relating to this Agreement, whether for negligence or otherwise, shall be limited to the Price.

11.3 In no event shall Akira be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any indirect or consequential loss or damage whatsoever, whether or not such loss was reasonably foreseeable or Akira had been made aware of the possibility such loss.

12 TERMINATION

12.1 Akira shall have the right to terminate this Agreement with immediate effect by notice in writing to the Customer if the Customer fails to make any payment when it becomes due.

12.2 Either party may terminate this Agreement forthwith by notice in writing to the other if:

12.2.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 days of being given written notice from the other party to do so; or

12.2.2 the other party commits a material breach of this Agreement which cannot be remedied; or

12.2.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or

12.2.4 the other party ceases to carry on its business or substantially the whole of its business; or

12.2.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

12.4 Any rights to terminate this Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of this Agreement as at the date of termination.

13 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services.



14 ASSIGNMENT

Neither party shall be entitled to assign or otherwise transfer this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, save that Akira may sub-contract the work or part of the work which it is required to perform under this Agreement.

15 SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

16 NOTICES

Any notice to be given by either party to the other may be delivered by hand or sent by fax, email or first class post to the address of the other party as appearing in this Agreement or such other address as such party may from time to time have communicated to the other in writing, and if delivered by hand or sent by fax or email shall unless the contrary is proved be deemed to be received on the day it was delivered or sent or if sent by first class post shall be deemed to be served 2 days following the date of posting.

17 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

18 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

Customer print name

Customer signature

Date of signature

