

Design & Development Terms

Update Date: 03 July 2023

These Design & Development Terms are supplemental to the Standard Terms, and form part of the Agreement between you (the “Customer”) and us (the “Business”, namely the business described in the Legal Information that is supplying the Services pursuant to the Agreement).

Agreed Terms

1. Agreement and interpretation

1.1 Your Agreement with us.

- (a) These terms & conditions (“**these Terms**”) are Additional Terms that are supplemental to our Standard Terms.
- (b) **The Terms of your Agreement** with us include the following: (i) The Proposal; (ii) these Terms; (iii) Data Protection Terms (if applicable); (iv) the Standard Terms of our Terms of Service; and (v) Policies.
- (c) **Conflict and ambiguity.** Except where otherwise expressly stated in the Proposal, if there is any conflict or ambiguity between a Term of the legal documentation listed in clause 1.1 (b) then a Term contained in one higher in the list shall have priority over one contained in one lower in the list.
- (d) **Deemed acceptance.** By submitting an order or requesting us to supply Services you are deemed to accept our Terms of Service, including these Terms or any Proposal, irrespective of whether they are signed by you or us or not, and you agree to pay us the Charges for Services that we supply to you.
- (e) **Updates to these Terms.** We may amend these Terms from time to time by posting an updated version to our Website, which shall be accessible via the Legal Information page. Alternatively, we shall send you the updated version using your Contact Information. Updates are effective immediately upon posting to our Website, transmission to you by email or notice via your account dashboard, whichever is sooner. If any update materially adversely affects your rights and obligations, we will provide written notice to you using your Contact Information, or (if applicable) your account dashboard, and those changes will be effective no sooner than 30 days after we notify you. Your continued use of the Services means you agree to such changes. These Terms were most recently updated on the Update Date above.
- (f) Capitalised terms not defined in these Terms will have the meanings in the Standard Terms, unless otherwise specified.

1.2 Definitions:

Acceptance: the acceptance or deemed acceptance of the Product by the Customer pursuant to **3**.

1 Acceptance Tests: the tests to be carried out on the Product as set out in **3** and (if applicable) as described in the Proposal.

2 Business Day: a day, other than a Saturday or Sunday or public holiday in United States, when banks in United States are open for business.

AI-Generated Outputs: Deliverables and any other outputs of the Services in any form, created using artificial intelligence.

AI Terms: additional terms and conditions, including indemnities and disclaimers that apply to AI-Generated Outputs, as set out in the Proposal.

Change Control Procedures: the procedures set out in these Terms.

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

3 Deliverables: documents, Products and materials developed by us or our agents, subcontractors, consultants and employees as part of or in relation to the Services in any form, including without limitation documentation, products, content, information, websites, apps, software, data, designs, drawings, reports, specifications (including drafts) and the Key Deliverables set out in any Proposal.

4 Design Agency: the design agency specified in the Proposal, if applicable.

5 Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to the Customer (but not the Business) relating to security of network and information systems and security breach and incident reporting requirements.

6 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.

- 7 **Non-Supplier Defects:** those defects described in 3.4.
- 8 **Phase:** in relation to the Timetable, one of the key phases of work identified in the Timetable.
- 9 **Product:** the website, platform, app or any other product described in the Proposal.
- 10 **Product Software:** the software for the Product commissioned by the Customer as specified in the Proposal, or agreed between the parties in writing, if applicable.
- 11 **Product Specification:** the specification for the Product set out in the Proposal.
- 12 **Project:** the provision by the Business of the Services as set out in the Proposal and these Terms.
- 13 **Proposal:** the written quotation for the Services or applicable in the website
- 14 **Quotation:** the Proposal.
- 15 **Server:** a computer server administered by the Business, (if applicable) as more particularly defined in the Proposal.
- 16 **Services:** the Product design and development services, and services which are incidental or ancillary to such services, to be provided pursuant to these Terms as set out the Proposal, including the Deliverables.
- 17 **Third Party Products:** those third party software products set out in the Proposal, or agreed between the parties in writing.
- 18 **Timetable:** the estimated timetable within which the Business is to implement the Project as set out in the Proposal, if applicable.
- 19 **these Terms:** these terms and conditions set out in clause 1 to 9 (inclusive).
- 20 **User:** any third party person who uses or visits the Product.
- 21 **Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be interpreted accordingly.

1.3 Further interpretation

- (a) To the extent that the context permits, definitions and rules of interpretation in our Standard Terms shall apply to these Terms.

2. Customer responsibilities

2.1 The Customer acknowledges that the Business'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 the design specifications provided by the Customer or the Design Agency and any information and data the Customer provides to the Business. Accordingly, the Customer shall:

- (a) provide the Business with access to, and use of, all information, data and documentation reasonably required by the Business for the performance by the Business of its obligations under these Terms; and
- (b) instruct and manage the Design Agency, unless otherwise agreed in writing.

2.2 The Customer shall be responsible for the accuracy and completeness of the Customer Materials used in or on the Product in accordance with 8.

3. Development and acceptance of Product

3.1 Once the Business has completed the design and development of the Product in accordance with the Timetable, the Business shall run the Acceptance Tests. The procedure set out in this 3 shall be repeated in respect of any further development works agreed by the parties from time to time.

3.2 The Acceptance Tests shall test compliance of the Product with the Product Specification. If applicable, the form and detail of such tests are set out in the Proposal, or if omitted from the Proposal, shall be determined at the sole discretion of the Business.

3.3 Acceptance of the Product shall occur when the Product has passed the Acceptance Tests. The Business shall notify the customer when the tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.

3.4 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 Business has no responsibility (**Non-Supplier Defect**), the Product shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Business 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 Business in full for all such additional services and products at the Business's then current fees and prices.

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

- (a) the Customer uses any part of the Product 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 Business is ready to commence running such Acceptance Tests or retests.

4. Third party products

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. License fees for such Third Party Products are not included in the Charges payable, unless otherwise agreed in writing.

5. Project management

5.1 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.
- 5.2 The project managers shall meet (including virtually) at least once every week until Acceptance and thereafter at least once every month for a highly custom project, unless otherwise agreed. The Customer shall provide minutes of these meetings to the Business.

6. Warranties

- 6.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform these Terms.
- 6.2 The Business shall perform the Services with reasonable care and skill.
- 6.3 The Business warrants that the Product will perform substantially in accordance with the Product Specification for a period of three months from Acceptance. If the Product does not perform, the Business shall assess for no or with additional charge, carry out any work necessary in order to ensure that the Product substantially complies with the Product Specification.
- 6.4 The warranty set out in 6.3 shall not apply to the extent that any failure of the Product to perform substantially in accordance with the Product Specification is caused by any Customer Materials.
- 6.5 These Terms sets out the full extent of the Business'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.
- 6.6 The Business:
- (a) does not warrant that:
 - (i) the Customer's use of the Services or the Product will be uninterrupted or error-free; or
 - (ii) the Services or the Product will be free from Vulnerabilities;
 - (iii) the Services or the Product will comply with any Heightened Cybersecurity Requirements, unless otherwise agreed in writing.

7. Intellectual property rights

- 7.1 All Intellectual Property Rights in the Product (including in the content of the Product and the Product Software), but excluding the Customer Materials, arising in connection with these Terms shall be the property of the Business and, unless otherwise stated in the Proposal or agreed between the parties in writing, the Business hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Product.
- 7.2 The Customer shall indemnify the Business against all damages, losses and expenses arising as a result of any action or claim that the Customer Materials infringe the Intellectual Property Rights of a third party.
- 7.3 Subject to any AI Terms in the Proposal which take precedence over this 7.3 in respect of AI-Generated Outputs, the Business shall indemnify the Customer against any sums awarded by a court as a result of any action or claim that the Product infringes any Intellectual Property Rights of a third party in the United Kingdom, other than infringements referred to in 7.2.
- 7.4 The indemnities in 7.2, 7.3 and 8.4 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; and
 - (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require.
- 7.5 The indemnities in 7.2, 7.3, 8.4 and 8.5 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.

8. Product content

- 8.1 If agreed between the parties in writing, including as part of any Plan, the Business shall update the Product with Customer Materials provided from time to time by the Customer. The Customer shall ensure that the Customer 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, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).
- 8.2 The Business shall grant the Customer access to the Server in order to update information held on the Product.
- 8.3 The Business shall include only Customer Materials in or on the Product, in addition to the Business' materials supplied or created to design or develop the Product. The Customer acknowledges that the Business has no control over any content placed on the Product by Users and does not purport to monitor the content of the Product. The Business reserves the right to remove content from the Product where it reasonably suspects such content is Inappropriate Content. The Business shall notify the Customer as soon as reasonably practicable if it becomes aware of any allegation that any content on the Product may be Inappropriate Content.
- 8.4 The Customer shall indemnify the Business against all damages, losses and expenses arising as a result of any action or claim that the Customer Materials constitute Inappropriate Content.
- 8.5 The Business may include the statement "Designed by Business" or similar on or in the Product in a form and location to be agreed.

9. Change Control Procedure

- 9.1 Any request by either party to change the Services ("**Change**" or "**Changes**"), shall be processed in accordance with the following Change Control Procedure.

- 9.2 Changes are in each case subject to written agreement between the parties, which shall set out the proposed effect (if any) on the Services, including changes to the specification, scope, execution or timing of the Services, and any of the Terms.
- 9.3 The Business and the Customer shall discuss any Changes 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 Business;
- or, if neither the Customer nor the Business wishes to submit a request or recommendation, the proposal for the Change will not proceed.
- 9.4 For each Change request or recommendation submitted, the party receiving the request or recommendation shall:
- (a) request further information; or
 - (b) approve the request or recommendation in principle; or
 - (c) notify the other party of the rejection of the request or recommendation.
- 9.5 A Change shall only become legally binding on the parties once the Change is agreed in writing (including by email) or signed (including electronically) by the Customer and the Business, at which point the Change shall be immediately effective and the Customer and the Business shall perform their respective obligations on the basis of the agreed amendment.