

# STANDARD TERMS AND CONDITIONS FOR WEBSITE DESIGN AND SERVICES

## THIS AGREEMENT IS BETWEEN

- (1) **RED SENTENCE LIMITED (company number 09033053) (“Red Sentence”); and**
- (2) **THE CUSTOMER as defined below ( the “Customer”)**

The Parties have agreed that Red Sentence shall provide the Customer with website design and development and related services on the terms and conditions set out below.

## AGREED TERMS

### (1) INTERPRETATION

The definitions and rules of interpretation in this clause apply in this agreement.

**Business Day:** any day (other than a Saturday or Sunday) when banks are generally open for normal business in London.

**Change Control Procedures:** the procedures set out in Schedule 1.

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

**Confidential Information:** has the meaning given in clause 11

**Effective Date:** the date Red Sentence receives instructions from the Customer for Red Sentence to provide the Services.

**Force Majeure Event:** has the meaning given in clause 10

**Intellectual Property Rights:** all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semiconductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

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

**Services:** the design and development services to be provided pursuant to this agreement as set out in the Proposal and the Site Specification.

**Site:** the website as set out in Proposal.

**Site Software:** the software for the Site commissioned by the Customer as specified in the Proposal

**Site Specification:** the technical and functional specification for the Site produced by Red Sentence and the timetable for development and delivery of the Site.

**Third Party Products:** those third party software products and /or third party hardware products and/or third party Red Sentence's services procured on the Customer's behalf by Red Sentence.

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

- a. Clause and schedule headings do not affect the interpretation of this agreement.
- b. References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- c. In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.

d. Words in the singular include the plural and in the plural include the singular.

e. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

f. References to including and include(s) mean respectively including without limitation and include(s) without limitation.

g. 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.

h. Writing or written includes faxes and e-mail.

### (2) SCOPE OF THE PROJECT

Red Sentence shall:

- i. liaise with the Customer in developing the look and feel of the Site and produce the Proposal; and
- ii. design, develop and deliver the Site in accordance with the Proposal; and
- iii. provide the Services.

### (3) CUSTOMER RESPONSIBILITIES

(i) The Customer acknowledges that Red Sentence'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 Red Sentence. Accordingly, the Customer shall provide Red Sentence with access to, and use of, all information, data and documentation reasonably required by Red Sentence for the performance by Red Sentence of its obligations under this agreement.

(ii) The Customer shall be responsible for the accuracy and completeness of the Materials on the Site,.

(iii) The Customer is solely responsible for the hosting, marketing, traffic volumes, operation and accessibility of the Website.

### (4) DEVELOPMENT A OF SITE

(i) Once Red Sentence has completed the consultation with the Customer pursuant to clause 2(i), Red Sentence shall provide the Customer with a Proposal. The Customer shall indicate its approval of the Proposal by the payment of 10%

(ten percent) of the Charges relating to the Services as indicated in the Proposal.

- (ii) Following receipt of payment of 10% of the Charges as set out in a above Red Sentence shall provide the Services as set out in the Proposal.

#### **(5) CHARGES AND PAYMENT**

Unless specifically agreed otherwise in writing between the parties, Red Sentence shall issue an invoice to the Customer monthly arrears in respect of the Charges for Services undertaken and the Customer shall pay to Red Sentence the Charges set out in such invoice within 15 days of the date of the invoice.

#### **(6) WARRANTIES**

- (i) Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.
- (ii) Red Sentence shall perform the Services with reasonable care and skill.
- (iii) This agreement sets out the full extent of Red Sentence'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 this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

#### **(7) LIMITATION OF REMEDIES AND LIABILITY**

- (i) Nothing in this agreement shall operate to exclude or limit either party's liability for:
  - i. death or personal injury caused by its negligence; or
  - ii. 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
  - iii. fraud; or
- (ii) any other liability which cannot be excluded or limited under applicable law.
- (iii) Neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- (iv) Subject to clause 4(i), each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the Charges paid or payable hereunder.
- (v) Except where Red Sentence has breached this Agreement and subject to clause 4 a above, the Customer accepts full legal responsibility for publication of the Site on the Internet and will carry out a full audit of the Site before publishing or authorising Red Sentence to publish it on the Internet and the Customer will indemnify Red Sentence in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of such publication,

#### **(8) INTELLECTUAL PROPERTY RIGHTS**

- (i) All Intellectual Property Rights in the Site which are developed specifically for the Customer in connection with

this agreement shall be the property of the Customer subject to payment in full of the Charges.

- (ii) 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 pursuant to clause 0.
- (iii) Red Sentence shall still be entitled to use the Intellectual Property Rights devised by it for its own promotional purposes.
- (iv) The Customer shall indemnify Red Sentence 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.

#### **(9) SITE CONTENT**

- (i) 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, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**).
- (ii) Red Sentence shall include only Materials on the Site. The Customer acknowledges that Red Sentence has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. Red Sentence reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. Red Sentence shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.
- (iii) Red Sentence shall not be liable for any loss or damage caused by website hacking, malicious attacks, a distributed denial-of-service attack, viruses or other technologically harmful material that may infect computer equipment, computer programs, data or other proprietary material due to use of the Site or due to downloading of any material posted on the Site, or on any website linked to it.
- (iv) The Customer shall indemnify Red Sentence against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- (v) Red Sentence may include the statement "Designed by Red Sentence" on the home page of the Site in a form to be agreed.

#### **(10) DATA PROTECTION**

- (i) Red Sentence warrants that, to the extent it processes any Personal Data on behalf of the Customer:
  - i. it shall act only on instructions from the Customer; and
  - ii. it will implement technical and organisational security measures specified by the Customer against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- (ii) In this clause, **Personal Data** has the meaning given in the Data Protection Act 1998.

## (11) TERM AND TERMINATION

- (i) This agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 13) terminate automatically on the first anniversary of the Effective Date, unless the parties agree in writing to extend the term of this agreement by a further year.
- (ii) Either party may terminate this agreement immediately at any time by written notice to the other party if:
- i. that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or

that other party:

1. ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
2. becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
3. a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
4. the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
5. any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

(iii) On termination of this agreement by Red Sentence pursuant to clause 11(ii) ii, all licences granted by Red Sentence under this agreement shall terminate immediately.

(iv) On expiry or termination of this agreement otherwise than on termination by Red Sentence pursuant to clause 11 (ii) ii, Red Sentence 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).

(v) On expiry or termination of this agreement, all provisions of this agreement 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.

## (12) CHANGE CONTROL

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

## (13) FORCE MAJEURE

- (i) The definition in this clause applies in this agreement.

**Force Majeure Event:** any event arising that is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

(ii) A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.

## (14) CONFIDENTIALITY

- (i) The definition in this clause applies in this agreement.

**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 pursuant to discussions between the parties), where the information is:

- i. identified as confidential at the time of disclosure; or
- ii. ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

(ii) 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.

(iii) 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.

(iv) The obligations set out in this clause 14 shall not apply to Confidential Information which the receiving party can demonstrate:

- i. is or has become publicly known other than through breach of this clause 11; or
- ii. was in possession of the receiving party prior to disclosure by the other party; or
- iii. was received by the receiving party from an independent third party who has full right of disclosure; or was independently developed by the receiving party; or
- iv. 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.

- v. The obligations of confidentiality in this clause 11 shall not be affected by the expiry or termination of this agreement.

**(15) NOTICES**

(i) A notice given under this agreement:

(a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

(b) shall be sent for the attention of the person, and to the address, fax number or e-mail address given in the Proposal (or such other person, address, fax number or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and

shall be:

(1) delivered personally; or

(2) sent by fax or e-mail; or

(3) sent by pre-paid first-class post, recorded delivery or registered post; or

(4) (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

(ii) A notice is deemed to have been received:

(iii) if delivered personally, at the time of delivery; or

(iv) in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or

(v) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or

(vi) in the case of registered airmail, five days from the date of posting; or

(vii) if deemed receipt under the previous paragraphs of this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

(viii) To prove service, it is sufficient to prove that the notice was transmitted by fax to the fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

**(16) PUBLICITY**

(i) All media releases, public announcements and public disclosures by either party relating to this agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other party and approved jointly by the parties prior to release.

**(17) ASSIGNMENT**

(i) Neither party may assign or transfer any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

**(18) ENTIRE AGREEMENT**

(i) Except as provided in this clause 18, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into this agreement (**Misrepresentation**), and neither party shall have any liability other than pursuant to the express terms of this agreement. Nothing in this agreement shall exclude or limit either party's liability for any Misrepresentation made knowing that it was untrue. Each party's liability for Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under this agreement, shall be subject to the limit set out in clause 5.

**(19) THIRD PARTY RIGHTS**

(i) The right of the parties to terminate, rescind, or agree any amendment, variation, waiver or settlement under this agreement is not subject to the consent of any person who is not a party to this agreement.

(ii) This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

**(20) VARIATION AND WAIVER**

(i) A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.

(ii) A waiver of any right under this agreement 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. No waiver shall be implied by taking or failing to take any other action.

(iii) Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

**(21) SEVERANCE**

(i) If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

(ii) If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

**(22) GOVERNING LAW AND JURISDICTION**

(i) This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

(ii) The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

This agreement has been entered into on the date stated at the beginning of it.

## Schedule 1 Change control procedure

1. Red Sentence and the Customer shall discuss any change to this agreement (**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 Red Sentence,

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

2. Where a written request for a Change is received from the Customer, Red Sentence 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 Red Sentence is not able to comply with such written request for a Change.

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

4. 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 this agreement, 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 Red Sentence.

5. For each CCN submitted, the Customer shall, within the period of validity of the CCN as set out in paragraph 4(h) of this Schedule 1:

- (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 Red Sentence 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 Red Sentence. The signing of the CCN shall signify acceptance of a Change by both the Customer and Red Sentence.

6. Once signed by the Customer and Red Sentence in accordance with paragraph 5 of this Schedule, the Change shall be immediately effective and the Customer and Red Sentence shall perform their respective obligations on the basis of the agreed amendment.