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# NetConstruct

## Standard Terms and Conditions

**Version Date:** 11 August 2009

**Classification:** Commercial in confidence

The following represent the Standard Terms and Conditions for the provision of Web Based Services (as defined below) by NetConstruct Limited

In these Standard Terms and Conditions (“Terms”):

“the Client” means any person or corporate body, for itself and on behalf of its subsidiary companies, wishing to purchase Web Based Services in relation to its business

“the Company” means NetConstruct Limited, along with any parent, subsidiary or associated company, whose registered office is at Central House, Otley Road, Harrogate, HG3 1UF (“the Company”)

## 1. Services To Be Provided

With effect from the date of the Client’s verbal and/or written instructions to proceed the Company shall, in consideration of the Prices being paid in accordance with the Payment Terms and subject to the Client performing its obligations in accordance with clause 3 of these Terms during the continuance of the Project Period, provide Web Based Services as agreed in writing between the parties in accordance with the Terms including the schedules forming part of the Terms.

## 2. Definitions

In all documents related to the Agreement unless the context otherwise requires the following expressions have the following meaning, and all other terms are as described in the Schedules:

Term	Description
Acceptance	Receipt by the Client of Web Based Services for beneficial use.
Acceptance Tests	Formal tests carried out by the Company on Web Based Services prior to delivery to the Client in accordance with clause 9.
Authorised Members of the User Community	Members of the user community nominated by the Client as authorised contacts with the Company’s Service Desk.
Call	A reported request to the Service Desk for service support.
Call Management System	The Company’s system through which Calls are logged, tracked and managed.
Change Control Process	The Company’s internal processes for monitoring change.
Company Support Unit	Specialist operational unit within the Company.
Conditions of Sale	The Company’s Conditions of Sale set out at Schedule B to these Terms.

Term	Description
Confidential Information	Shall include, but not necessarily be limited to, all information which is not publicly known including the business, finances, technology (including without limitation the Software and the Documentation) trade secrets, and any other commercially sensitive information of either party regardless of its nature.
Content Management System	Proprietary or tailored software built into an application to enable the content of an internet, intranet or extranet website to be added, deleted or changed by semi-skilled or unskilled people authorised by the client.
Defect	A software, hardware or network malfunction or issue for correction.
Delivery Date	The date(s) agreed by the parties in writing on which the completed or stage-completed Web Based Services are to be released to the Client for beneficial use, which may be subject to extensions of time agreed in writing during the period of the Project Period.
Developed Web Services	Completed web development, intranet development, extranet development, back office integration, consultancy, e-marketing or similar services provided by the Company to the Client.
Hours of Cover	The defined time during which the Support Services will be provided.
IPR	Intellectual Property Rights - All copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, registered design and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world.
Licensed Software	Proprietary and third party software made available by the Company for use by the Client but without conferring ownership or transfer of IPR.
Ordered Services	The services ordered by the Client in response to a submitted proposal, estimate, quotation or other form of offer from the Company prior to the commencement of work or at any time thereafter.
Payment Schedule	The schedule of payment for Web Based Services agreed in writing between the parties and in the absence of other agreement as set out in the Conditions of Sale.
Payment Terms	The Payment Terms set out in the Conditions of Sale set out in Schedule B.
Price	The rates charged to the Client by the Company for the provisions of services.

Term	Description
Problem	Term for a Call that cannot be resolved by the Service Desk Analyst and is escalated to a Company Support Unit for resolution. The associated Call record is linked to the Problem to facilitate monitoring, tracking and analysis.
Project Period	Any period during which the Company provides Web Based Services to the Client.
Service Desk	Core support service delivery and management infrastructure element responsible for the delivery of all centrally provided remote support activities.
Service Desk Analyst	First line call agent working within the Service Desk, responsible for receiving, logging and diagnosing incidents, attempting resolution, raising problem records and allocating them to the appropriate Company Support Unit.
Service Entitlement	A validation of the users and/or the assets identity to ensure service to be provided under the terms of the contract is valid and chargeable or invalid and refused.
Service Manager	Company line manager to whom the Service Desk Analyst reports.
Service Schedule	Specific details of the support service for a given contract.
SLA	Service Level Agreement as set out in Schedule A to these Terms unless varied by agreement in writing between Client and the Company.
Source Code	The computer programming for an application, which may be written in one or more computer languages such as Java, C++, Basic, HTML or similar.
Standard Default	The normal service level, unless explicitly varied by agreement in writing.
Support Services	Contracted services provided by the Company to the Client in support of other Web Based Services.
Terms	These Standard Terms and Conditions.
Timebank	Annual hours of pre-paid support services provided under the SLA. Additional time may be purchased as required.
Upgrades	Subsequent versions of web based services and licensed software.
User Community	Anticipated users or managers of the Client's website and related services.

Term	Description
Web Based Services	Includes but not necessarily limited to consultancy, web development, intranet development, extranet development, back office integration, e-marketing, hosting, maintenance, support services, goods and/or related products and services provided by the Company to the Client including any specification or proposal agreed by the parties and any associated documentation.

### 3 Price and Variations

3.1 The Price for the Web Based Services will be as agreed in writing between the parties both at the outset of the Project Period and as varied or added to during it as requested by the Client or otherwise further agreed in writing.

3.2 The Company will endeavour to deliver the completed Web Based Services to the Client, together with all relevant design and other documentation in relation to the same, by the planned Delivery Date agreed between the parties plus any extensions of time further agreed between them; provided however that time shall not be of the essence in relation to the Delivery Date.

3.3 The Client may request changes to the scope of the services agreed between the parties from time to time and the Company shall indicate what impact, if any, such changes shall have on estimated costs and timescales and any agreed variation shall be documented as to scope, costs and timescales by the parties in writing.

3.4 The cost of additional work, variations, delays or disruption in excess of that agreed in writing between the parties will be reimbursed by the Client to the Company either at additional Prices agreed with Company or if not agreed in accordance with the Company's then current applicable daily rate(s) in effect at the time of performance. In relation to the cost of delays, the Company shall be entitled to charge for all time allocated by it for the performance of work where it has been unable to carry out that work at the allocated time by reason of the Client's failure to comply with its obligations under clause 4.2 below.

### 4 Client's Responsibilities

4.1 The Client shall ensure that its employees and other independent contractors co-operate promptly and reasonably with the Company and its employees in carrying out its obligations during the Project Period.

4.2 The Client shall promptly and/or at the times requested by the Company furnish the Company with such information, documents and other items, and undertake and complete required tasks, as it may reasonably request for the proper performance of its obligations during the Project Period.

### 5 Company's Responsibilities

5.1 The Company shall ensure that its employees and subcontractors endeavour to deliver the stated Web Based Services in a timely manner that meets the criteria agreed between the parties.

5.2 The Company shall ensure that its employees and subcontractors co-operate promptly and reasonably with the Client and its employees in carrying out its obligations as agreed between the parties.

5.3 The Company shall promptly furnish the Client with such information, requests for information and documents as may reasonably be necessary to enable both parties to complete their respective obligations to each other.

## **6 Grant of Rights**

6.1 On payment in full of the Price, the Company grants to the Client a licensed, non-exclusive, non-transferable, right to use the software required by the Web Based Services on any processor owned or controlled by the Client.

6.2 The Client may not disclose or make available software to any entity nor permit others to use it except the Client's employees and agents who may use it only on the Client's behalf and for the purposes of the web development.

6.3 Ownership of IPR for Licensed Software is retained by the existing owner of the IPR and is not transferred to the Client.

6.4 Upgrades to Developed Web Services and Licensed Software are not included within the Price or the licence fee. Software upgrades will be made available by the Company to the Client as the upgrades are from time to time released, at the rates prevailing at the time of the upgrade. Upgrades are optional.

## **7. Additional Services**

7.1 The Company will provide such additional services may be agreed from time to time by the parties including, without limitation, software training, customisation of the Developed Web Services, promotional activities and e-marketing.

7.2 Prior to providing any services under this clause, the Company will obtain the Client's request for such services and agreement as to Price, time scale and the availability of any such customisation or software development.

7.3 The Client will pay the Company for any additional services provided by the Company either at the Price agreed with Company or in accordance with the Company's then current applicable daily rate(s) in effect at the time of performance if not otherwise agreed in writing.

## **8 Surcharge Services**

8.1 The Company will provide such surcharge services in addition to those initially agreed by them as the parties may further agree upon from time to time.

8.2 The Client will pay the Company for any surcharge services provided by the Company to the Client in accordance with the Company's then current applicable daily rate(s) in effect at the time of performance unless otherwise agreed in writing.

8.3 Surcharge services may include, but are not limited to, services requested or required because of any one or more of the following conditions:

- i. repair, adjustment or modification of any Web Based Services, supplied by the Company, has been made, or attempted, by persons other than authorised employees of the Company and authorised employees of the Client.
- ii. effect of other software, hardware or networked services under the control of the Client or related to the Client's activities on the Web Based Services supplied by the Company.
- iii. failure of the Client to properly follow recommended back-up procedures.
- iv. failure of the Client to properly follow procedures recommended by the Company.
- v. failure by the Client to implement recommendations in respect of solutions to errors previously advised by the Company.
- vi. use of the Website on equipment other than that specified by the Company.
- vii. use of the Website within a network configuration other than that agreed to by the Company.
- viii. use of the Website for a purpose for which it was not designed.
- ix. use of operating software that does not meet Company's specifications.
- x. misuse or accident caused by the Client.
- xi. improper programming by the Client or improper installation by the Client.
- xii. damage or problems caused in transit or reinstallation following any relocation of the equipment upon which the Website is installed or to which the Website is connected.
- xiii. damage or problems caused by accessories, alterations, attachments or other devices not furnished, maintained or approved by the Company.
- xiv. acts of God, fire, flood, earthquake, lightning strikes, riots, war, nuclear disaster or other such causes.

## **9 Testing and Acceptance**

9.1 The Acceptance Tests shall be the Company's standard acceptance tests plus any specific tests agreed by both parties in writing prior to the Acceptance Tests.

9.2 The Company shall use its reasonable endeavours to ensure that the Developed Web Services are ready for acceptance testing by the Delivery Date agreed by the parties. In any event, the Company shall give to the Client 5 working days prior notice of the date of the Acceptance Tests to be undertaken by the Company. Unless otherwise agreed, the Acceptance Tests shall take place on the sixth working day after such notice has been given.

9.3 The Client shall accept the Developed Web Services immediately after the Developed Web Services have passed the Acceptance Tests and the Client will confirm within 5 Working Days that it has accepted the Developed Web Services; in the event of its not providing such confirmation however Acceptance shall be deemed to have occurred in accordance with clause 9.7 below.

9.4 If the Developed Web Services fail to pass the Acceptance Tests, the Client shall notify the Company within 14 days of the Acceptance Tests being carried out and repeat tests shall be carried out and the Company shall undertake remedial work at no cost to the Client until the earlier of the following

occurs : The Developed Web Services pass the Acceptance Tests or the Acceptance Tests have been failed 3 times. The Client shall not be entitled to regard the Acceptance Tests as having failed by reason other than failure to pass the Acceptance Tests in accordance with this Agreement.

9.5 If the Developed Web Services have not been accepted by the Client on or after the occurrence of the events specified in clause 9.4 then the Client may by written notice to the Company terminate the Project Period and, upon any such termination, the Client will promptly return to the Company the Developed Web Services along with all documentation and other equipment and confidential information belonging to the Company.

9.6 In the event of any dispute as to whether the Acceptance Tests have been passed, the matter shall be subject to the dispute resolution procedure in clause 12.

9.7 If the Developed Web Services are not rejected in accordance with clause 9.4, they will be deemed accepted.

9.8 If at any time the Client shall commence live running of the whole or any part of a Developed Web Service (other than in the Acceptance Tests) then the Client shall be deemed to have accepted the Developed Web Services.

## **10 Warranties**

10.1 The Company warrants and represents to the Client that it will perform the Web Based Services and any other services and its obligations to the Client generally with reasonable skill, diligence and care, and maintain a sufficient number of appropriately qualified personnel or available support specialists so as to perform its obligations under this Agreement.

10.2 The Company warrants that it is the owner or is otherwise entitled to use and permit the Client to use any software, code, designs, content or similar assets incorporated in any Web Based Services as provided by the Company under these Terms and the terms agreed between the Company and the Client.

10.3 The Client warrants that any software, code, designs, content or similar assets it provides to the Company for incorporation in any Web Based Services belongs to the Client or the Client has appropriate authority for its use.

10.4 The Company warrants that it will not use or disclose to any third party (save as required by lawful authority or by other agreement with the Client) any trademark of the Client whether registered or unregistered except for incorporation into the Developed Web Services.

10.5 The Client shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of warranty.

10.6 The Web Based Services shall be guaranteed by the Company against defect for a period of 3 months from the date of Acceptance. The Client shall notify the Company of the details of any defect within 7 days of the Client becoming aware of the defect.

10.7 The Company shall repair the defect in accordance with the Service Level Agreement set out in Schedule A or such other timescale as may have been agreed in writing with the Client.

10.8 The warranty shall not apply if the Web Based Services become defective due to the misuse or maltreatment by the Client. Misuse is classified as changes being made to the Web Based Services by staff other than those employed by the Company, except changes made by proper use of any Content Management System supplied by the Company under the Agreement.

10.9 The warranties provided herein shall be the only warranties applicable to the Web Based Services. Any other conditions or warranties implied are expressly excluded.

10.10 Save as for the warranties contained in this Agreement, the Company makes no warranty that the Web Based Services are error free or that their use will be uninterrupted.

10.11 Following acceptance of the Web Based Services by the Client, the Company does not give any warranty in respect of any third party software or products used by the Web Based Services.

10.12 The Company does not warrant that the Web Based Services are impermeable to viruses and interference by third parties, but shall use reasonable endeavours to ensure that the Web Based Services as provided do not introduce viruses to the Client's systems.

10.13 The Web Based Services shall perform substantially in accordance with the specification agreed in writing between the parties, minor interruptions and errors excluded.

10.14 Any documentation and training offered by the Company with respect to the Web Based Services will provide users with adequate instructions to enable them to operate and use the Developed Web Services effectively.

10.15 The Company warrants that it shall comply with all applicable legislation in providing the Web Based Services.

10.16 The Company shall not be liable if a failure to meet the warranties set out here is caused by:

- I. any defect or changes in the software or hardware of the Client's or its agents or unspecified third parties used by the Website.
- II. modifications or customisation made by or on behalf of the Client to the Web Based Services.

10.17 To the extent permitted by applicable law, the Company excludes all conditions, terms, representations (other than fraudulent or negligent representations) and warranties relating to the Web Based Services, either express or implied, that are not expressly stated herein, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result.

10.18 The Company shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.

10.19 The Company reserves the right to charge for any additional work undertaken concerning the Web Based Services requested by the Client except work carried out to rectify a defect covered by one of the warranties given above.

## **11 Non-Solicitation of Staff**

The Client agrees that during the Project Period and for an additional period of 2 years after termination, the Client shall not directly or indirectly canvas with a view to offering or providing employment to, offer to contract with (other than where an employee responds to a bona fide advertisement) or entice to leave any employee of or contractor to the Company engaged in the performance of the Services without the prior written consent of the Company.

## **12 Dispute Resolution**

In the event of a dispute or difference arising in connection with the interpretation or application of these Terms amongst or between any or all of the Parties, before invoking the jurisdiction of the Courts, the Client and the Company agree first to pursue a mediation process as follows :

12.1 The Party alleging the dispute or difference ("the Complainant") shall give notice by letter to the other party (the 'Recipient') with a written statement of details of the dispute or difference and require a meeting of the Parties within 28 days of the date of the letter to resolve the dispute or difference informally.

12.2 If no meeting is convened within a 28 day period stipulated by the Complainant or a meeting is held but no resolution of the dispute or difference is achieved by the Parties, the parties may jointly apply for the dispute or difference to be referred to non-binding mediation involving the assistance of an independent mediator to be agreed between the parties or in default of such agreement within 7 days, appointed, at the requirement of either party, by the Centre for Dispute Resolution.

12.3 On the appointment of an independent mediator by the Centre for Dispute Resolution the parties agree to cooperate with the timetable set down by the independent mediator and attend in person at the time and at the place(s) reasonably specified by the mediator, bearing in mind the respective parties to the dispute, with the objective of settling promptly and in good faith the dispute or difference.

12.4 If the dispute or difference has not been settled by the mediation process described above within ninety (90) days of the date of the original letter from the Complainant, any of the Parties shall have the right to commence legal proceedings for its resolution.

### **13 Service Level Agreement and Conditions of Sale**

These Terms incorporate the Service Level Agreement set out in Schedule A and the Conditions of Sale set out in Schedule B.

### **14 Governing Law**

This Agreement shall be governed by, and construed in accordance with, English Law.

# Schedule A - Service Level Agreement

## 1 The Service

The hosting, support and maintenance of the Web Based Services and/or Developed Web Services supplied by the Company to the Client will be as per the Terms, this Service Level Agreement and the Conditions of Sale.

## 2 Price

2.1 The Price for support and maintenance, web hosting and related services are as agreed in writing between the parties or otherwise in accordance with the Terms, and will be invoiced in advance of the commencement of Service delivery and paid in accordance with the Conditions of Sale.

2.2 The support and maintenance Price provides for a time-bank for support services as described in paragraph 3 below. Support time will be accounted for in 15 minute units. Eight hours of support time equates to one day.

## 3 The Support Services Provided

### 3.1 Management

- i. This service provides the management control for matters relating to the delivery of the contracted Web Based Services including service review, reporting, contractual matters and service level agreements.
- ii. Matters that will be logged against the Timebank are : Support calls of any type, investigative and resolution work, ad hoc consultancy and reporting at the request of the Client, issue and technical management.
- iii. Matters that will not be logged against the Timebank are : Annual contract renewal.

### 3.2 Incident & Problem Management

- i. This service covers the management of the resolution of all reported incidents concerning the Web Based Services through to closure, the management of problems and related change requests and the restoration of the service following hardware and software failures.
- ii. Matters that will be logged against the Timebank are : Support calls of any type, investigative and resolution work, ad hoc consultancy and reporting at the request of the Client, issue and problem management.
- iii. Matters that will not be logged against the Timebank are : Rectification of Defects that are the responsibility of the Company.

### 3.3 Enhancements & New Requirements

- i. This service provides a mechanism for receiving requests for changes and enhancements to the Web Based Services.

- ii. Matters that will be logged against the Timebank are : Support calls of any type, investigative and resolution work, ad hoc consultancy and reporting at the request of the Client, issue and technical management, enhancements and new requirements requested by the Client.
- iii. Matters that will not be logged against the Timebank are : Requests carried out under a quoted extension to contract and/or quoted new requirements.

#### **4 Client's Responsibilities**

The Client shall ensure the following :

- 4.1 That the scope and content of the Service is understood by Authorised Members of the User Community.
- 4.2 That requests for the Service are made only by Authorised Members of the User Community.
- 4.3 That Authorised Members of the User Community using the Service have received appropriate training and/or guidance.
- 4.4 That the integrity of all Client owned and generated data is satisfactorily maintained.
- 4.5 That the confidentiality of secure information is satisfactorily maintained.
- 4.6 That the Developed Web Services are satisfactorily managed by the Client as anticipated under the Terms.
- 4.7 That known current or planned issues on which the Client requires action by the Company are notified by the Client to the Company's Service Desk at the earliest opportunity, and confirmed without delay in writing, giving sufficient time for investigation, agreement and implementation of necessary action.
- 4.8 That known current or planned issues within or associated with the Client's business that could have an impact on the delivery of the Service by the Company are notified to the Company's Service Manager, and confirmed without delay in writing, giving sufficient time for investigation, agreement and implementation of necessary action.

#### **5 Company's Responsibilities**

The Company shall ensure the following :

- 5.1 That the Service is delivered in compliance with the requirements described in this Schedule.
- 5.2 That the scope and content of the Service is understood by the Company's staff and management.

5.3 That the Service processes and procedures are followed.

5.4 That changes to the Service are documented in accordance with its Change Control Process.

5.5 That known current or planned issues on which the Company requires action by the Client are notified by the Company to the Client at the earliest opportunity, giving sufficient time for investigation, agreement and implementation of necessary action.

5.6 That known current or planned issues associated with the Company's delivery of the Service that could have a material impact on the Client are notified by the Company to the Client, giving sufficient time for investigation, agreement and implementation of necessary action.

## **6 Service Entitlement**

When making a Call to the Service Desk the user on behalf of the Client will be requested to provide its Service Entitlement to allow the Service Desk to validate entitlement to Service. Failure to provide valid Service Entitlement information will mean that the Call is rejected and closed. Entitlement failures will be notified to the Company's service management.

## **7 Call Management**

Calls to the Company's Service Desk shall be by telephone or e-mail.

Once received, the Service Desk will request and log the Call details on the Call Management System. The Call will be given a unique identity number.

If the Service Desk successfully resolves the Call, the log will be closed. If the Call cannot be resolved it will be routed to the appropriate Company Support Unit, which will then manage the Call to completion.

## **8 Hours of Cover**

Supported Hours (Standard Default) : 08.45 to 17.30 UK time Monday to Friday (excl public holidays)

For periods of cover outside these hours additional arrangements should be made and appropriate charges will be incurred. Standard service levels will not necessarily be applicable.

## **9 Response Times and Defect Types**

The Company will respond to all Defects reported within the Company normal business hours of 08:45 to 17:30 UK time Monday to Friday, excluding public holidays, in accordance with the response time detailed below. A 'response' is defined as either a rectification of the Defect or a plan of action to deal with the Defect. Customers with more than one open Defect can assign relative priorities for such Defects.

Defects shall be notified by telephone to the Service Desk or email to 'helpdesk@netconstruct.co.uk'. Defects notified by telephone must be confirmed by email to 'helpdesk@netconstruct.co.uk'.

Prioritisation of response times:

Severity	Definition	Response Time
1 - Major	Defect that means that the Developed Web Services or a major part of the Developed Web Services is unavailable, and which is critical to the Client's service delivery.	Within 8 hours. The Company will use all reasonable endeavours to respond immediately to Major Defects.
2 - Minor	Defect in a part of the Developed Web Services and which is not critical to the Client's service delivery.	Within 3 working days.
3 - Cosmetic	A documentation or cosmetic Defect.	Within 11 working days.

## 10 Defect Service Delivery

The Company and the Client will agree a classification for the Defect as either 'Major', 'Minor' or 'Cosmetic' and the following procedure will apply:

10.1 For Services delivered by the Company, the Company will use all reasonable endeavours to correct any Defect, or to obviate or mitigate the effect of the Defect, or to provide an automated work-around.

10.2 For Services delivered by the Company's hosting service providers, hosting service providers will monitor and maintain the server and its connection to the internet 365(6) days p.a. with 24 hour per day support and will use all reasonable endeavours to correct any Defect, or to obviate or mitigate the effect of the Defect, or to provide an automated work-around.

## 11 Hosting and Network Availability

Target hosting availability is 99.5% uptime p.a.

## 12 Hardware Availability

Where Service availability is affected by hardware failure of a dedicated or shared server the hosting service provider will use all reasonable endeavours to replace defective parts and restore Service in accordance with the time stated in this Schedule A.

## 13 Limitation of Liability

Neither the Company nor the hosting service provider will be liable for any loss of data that results from a hardware or network downtime, for any consequential direct or indirect losses due to hardware or network downtime, or for any recovery and reloading of data and software.

## 14 Security

The hosting provider will maintain industry standard levels of security for physical hosting location, network, denial of service prevention, data protection, identity validation procedures, system authentication, objects representing monetary value, anti-virus protection, backup, internal/external deliberate/accidental threat sources and trust relationships.

# Schedule B - Conditions of Sale

## 1 Prices

1.1 The Company shall use all reasonable endeavours to deliver the Web Based Services at the Price agreed with the Client. If no Price is agreed the Company will charge the Client on an hourly basis at its usual hourly rates details of which are available on request.

1.2 The Company may increase the price of the Web Based Services to reflect increases in the Company's costs due to factors beyond its control only by agreement with the Client. These include but are not limited to fluctuations in foreign exchange rates duties and the cost of labour and materials as well as other costs. The Company will endeavour to notify any proposed price increase to the Client as soon as it becomes aware of these.

1.3 The Client will reimburse reasonable expenses necessarily incurred in connection with the provision of the web development services up to the estimated amount, subject to the production, upon request, of receipts for the same.

## 2 Delivery

2.1 The Company shall use all reasonable endeavours to deliver the Web Based Services by the Delivery Date, as defined in the schedule of Ordered Services. Unless explicitly stated by the Client, the work will not be carried out on the basis of 'time is of the essence'.

## 3 Payment Terms

3.1 The Price and the rates shall be paid by the Client as agreed in writing between the parties.

3.2 The Price and other charges are exclusive of any applicable VAT and other tax or duty which shall be payable by the Client at the rate and in the manner prescribed by law against submission of a valid tax invoice.

3.3 Unless agreed in writing to the contrary, on instructions from the Client to proceed, the Company will submit a deposit invoice equal to 30% of the Price, which is payable within 14 days of the invoice date.

3.4 The Company shall raise further invoices for the Web Based Services at regular instalments throughout the Project Term and these shall be payable within 14 days of the invoice date.

3.5 Invoices not paid by the due date will attract interest at a rate of 5% per annum above the base lending rate of Lloyds TSB Bank Plc until payment of the invoice and any interest is received.

3.6 Where the Client disputes any invoice it must advise the Company within 10 days of receipt of invoice.

3.7 Failure to pay strictly in accordance with these provisions shall entitle the Company to withdraw any credit facilities provided to the Client and to stop any further work being carried out on, or the continued provision of, the Web Based Services.

#### **4 Risk and Transfer of Rights**

4.1 Risk in the Developed Web Services shall pass to the Client on delivery. If any part of the Developed Web Services shall thereafter be lost, destroyed or damaged (other than by reason of defect in the Developed Web Services as supplied by the Company), the Company shall at the Client's request, promptly replace the same subject to the Client paying the cost of such replacement.

4.2 With the exception of Licensed Software and other products and services for which intellectual property rights remain with the existing owner, ownership of the Developed Web Services shall pass from the Company to the Client on receipt by the Company of full payment for the web development services and other related support services.

4.3 Until the Company has received payment in full, the Client shall not integrate Developed Web Services with any unspecified third party software or make any alterations to it.

4.4 If the Client fails to make payment in full for Web Based Services by the due date, the Company reserves the right to isolate and prevent further use of the Developed Web Services and related support services. Restoration of services in such situations will be at the Client's expense.

4.5 When delivering Web Based Services and installing the Web Based Services, the Company shall comply with all reasonable requirements of the Client in relation to the conduct of the Company's employees and agents whilst on the Client's premises and shall use all reasonable endeavours to ensure that service delivery and installation causes no unreasonable disruption to Client's business.

#### **5 Contents**

5.1 The Company reserves the right to refuse to install any content to the Client's Developed Web Services that in its reasonable opinion is illegal, defamatory, or indecent.

5.2 The Client shall indemnify without limit the Company against any legal, defamation, indecency, intellectual property rights or other claim brought against the Company arising from information provided by the Client and incorporated by the Company in the Client's Web Based Services, and/or information incorporated by the Client and/or by parties authorised by the Client into the Client's Web Based Services.

#### **6 Termination**

6.1 Except in matters of non-payment under paragraph 3 of this Schedule, termination of delivery of any service is subject to 3 months notice in writing by either party, and 6 months notice in writing by the Client in respect of hosting and support services, unless agreed otherwise, during which the service(s) will continue to be provided by the Company at the prevailing Prices. Unused proportions of pre-paid services

are not refundable. Transfer of virtual and physical property and registrations by the Company will be subject to transfer fees.

6.2 Either party may terminate the Agreement forthwith :

- i. If the other party breaches a material term of the Agreement or fails to remedy a remediable breach within 30 days of a notice to remedy, or
- ii. If the other party becomes insolvent, bankrupt, goes into liquidation, passes a resolution for winding up, proposes to make an arrangement with its creditors or has a receiving or administration order made against it.

6.3 Termination of the Agreement shall not affect any rights accruing to a party prior to the date of termination.

## **7. Indemnity**

7.1 Each party shall indemnify and keep indemnified the other against injury (including death) to any person or for damage to property that may result from the act, default or negligence of the other party or any person for whom it is responsible.

7.2 The Company's liability in the event of damage to property shall be limited to £100,000.00 or the value of the contract whichever is the lesser, for one or a series of connected events.

## **8. Liability**

8.1 The Company's liability whether in Agreement or tort (including negligence) except in relation to personal injury or death shall be limited to £100,000.00 or the value of the contract whichever is the lesser.

8.2 The Company shall not be liable to the Customer for any damage to software, damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage

## **9 Proprietary Rights**

The Client shall notify the Company immediately if the Client becomes aware of any unauthorised use of the whole or any part of the Web Based Services or Intellectual Property Rights by any person and shall take any action required by the Company to stop such unauthorised use.

## **10 Confidentiality**

The information contained in the agreements between the parties and the Confidential Information is confidential and neither party shall divulge any of these matters to a third party without the other party's consent.

## **11 Announcements**

No party shall issue or make any public announcement or disclose any information regarding the Agreement unless prior written consent has been obtained from the other party.

## **12 Notices**

12.1 All notices under the Agreement shall be in writing.

12.2 Notices shall be deemed to have been duly given:

- i. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- ii. when sent, if transmitted by fax and a successful transmission report or return receipt is generated; or
- iii. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- iv. on the tenth business day following mailing, if mailed by airmail, postage prepaid, in each case addressed to the most recent address or facsimile number notified to the other party.
- vi. and in all cases on receipt of confirmation from the Company or its authorised representatives of receipt.

12.3 The Company will not accept service of notices by e-mail under Clause 12 of the Terms (Dispute Resolution) and paragraphs 6 (Termination) and 16 (Assignment) of this Schedule B (Conditions of Sale).

## **13 Severance**

If any provision of the agreements between the parties is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from agreements between the parties and rendered ineffective as far as possible without modifying the remaining provisions of the agreements between the parties, and shall not in any way affect any other circumstances of or the validity or enforcement of the agreements between the parties.

## **14 Sub-contracting**

The Company may perform any or all of its obligations to the Client through agents or sub-contractors, provided that the Company shall remain liable for such performance and shall indemnify the Client against any loss or damage suffered by the Client arising from any act or omission of such agents or sub-contractors in carrying out that work.

## **15 Force Majeure**

The Company shall not be liable for its failure to carry out its obligations to the Client where it is prevented from doing so by an event or events beyond its reasonable control.

## **16 Assignment**

Neither party shall assign or transfer the agreements between the parties without the express written consent of the other.

**17 Waiver**

No waiver or forbearance of the Company in enforcing any of its rights against the Client will prejudice its right to do so at a later date.

**18 Agency, Partnership**

The agreements between the parties shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for by the Terms.

**19 Third Parties**

A person who is not a party to the agreements between the parties has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the agreements between the parties but this does not affect any right or remedy of a third party which exists or is available apart from such Act.