

# Ubisan Management



## Terms and Conditions

### 1. Introduction

1.1 These terms and conditions constitute the entire terms and conditions upon which The Service Provider provides the Service and upon which the Customer agrees to contract for the use of the Service.

1.2 This Agreement supersedes any written or oral representations, statements, understandings or agreements, except where specifically varied by written agreement by The Service Provider

1.3 By placing an order for the Service, you, the Customer, confirm your acceptance of the terms of the Agreement.

1.4 In the event of any conflict between the Agreement and any other document, the Agreement shall prevail.

### Definitions

In this Agreement:-

“**Agreement**” means these terms and conditions together with the Order Confirmation.

“**Completion**” means the date when the Service shall be complete as defined in the Order Confirmation.

“**the Customer**” and “**You / Your**” means the company, firm, person, persons, corporation or public authority identified in the Order Confirmation as contracting for the Service and includes their successors or personal representatives.

“**the Contract Price**” means the price for the Service set out in the Order Confirmation.

“**the Order Confirmation**” means the email or letter sent to the Customer by the Service Provider which sets out details of the Service to be provided, price, completion date (if any) and such other specific contractual terms as may be appropriate.

“**the Service**” means the provision of Website design services, Web development consultancy and Website Services (together or individually known as “**Work**”), more fully described in the Order Confirmation.

“**the Website**” means the website to be designed by the Service Provider for the Customer.

“**Working Day**” means within the hours of 9.00am to 5.30pm, Monday to Friday only, not including bank holidays.

“**Print Ready PDF**” means (PDF X1a) with correct crops and bleeds, vector graphics

quality.

**“Sign Off” means** the Customers instruction to the Service Provider to proceed with agreed stages of the Work as set out in the Order Confirmation

**“the Service Commencement Date”** shall be the date the Service is available as set out in the Order Confirmation.

**“the Service Provider”** or **“we/our/us” UBISAN MANAGEMENT LTD** a company registered in Scotland (Company Number **SC325910**) and with its registered office 105 MITRE ROAD, JORDANHILL, GLASGOW, UNITED KINGDOM, G14 9PQ

**“Brief” means the** detailed information required from a customer enabling the Service Provider to deliver the Service more fully described in the order confirmation.

**“Writing”** includes any written paper document, any fax and any email correspondence.

## **2. Duration**

2.1 The Service Provider contract with you is project based and terminates upon Completion of the Service.

## **3. Service provision**

3.1 The Service Provider will provide an Order Confirmation for all orders accepted but reserves the right to accept or reject any order.

3.2 The Service Provider will use all reasonable endeavours to provide the Service as described in the Order Confirmation.

3.3 The Service Provider may at any time amend the Service for any reason including, but not limited to, technical, legal or business reasons.

3.4 Any dates quoted for delivery of services are approximate only and we shall not be liable to you for any delay in delivery of services howsoever caused. Time for delivery shall not be of the essence unless stated on the Order Confirmation.

3.5 On completion of the Work, the final Website will be uploaded to the web hosting company specified by the Customer, however in the event that the Customer has specified a web host other than one supplied or arranged by the Service Provider, the Service Provider reserves the right if not satisfied that the server to be used is adequate for the purpose of hosting the final Website, to nominate a suitable web hosting company to host the final Website and in the event that the Customer does not agree to use this web hosting company for whatever reason, the Service Provider shall have no further obligations in this regard.

3.6 The Service Provider undertakes to use reasonable skill and care in providing the Service as described in the Order Confirmation.

## 4. Customer Obligations

4.1 The Customer shall pay the charges for the Service in accordance with clauses 5, 6 and 7 below.

4.2 The Customer is responsible for providing a satisfactory level of cooperation and for providing all necessary project information and facilities to enable the Service Provider to produce and deliver a quality service, including:-

4.2.1. Correct and timely Sign Off in regard to enable the Service Provider to proceed with stages of the Work.

4.2.2. Provision of logo's 'vector graphic' quality, high quality "print ready PDF" standard.

4.2.3. Remote access where applicable.

4.2.4. Correct contact details for all those involved with the work

4.2.5. Detailed written Brief.

4.3 Should the Customer fail to provide the material required for inclusion in the Website within three months of the date of this Agreement then the Service Provider may at his sole discretion terminate the Agreement and recover from the Customer any costs, expenses, fees or other charges which may have been incurred.

4.4 The Customer will be responsible for obtaining and holding all consents, licences, permits and other similar instruments applicable to material it supplies to the Service Provider for incorporation into the Work, including without limitation copyrights, trade marks, logos, patents and all such similar instruments.

4.5 The Customer warrants and represents to the Service Provider that any element of text, graphics, photos, designs, trademarks or other material supplied to the Service Provider for inclusion in the Work are owned by the Customer, or that the Customer has permission from the rightful owner to use each of these elements and that the Service Provider's use of such material shall not infringe the intellectual property rights of any third party.

4.6 Without prejudice to its rights in terms of Clause 8 hereof, the Service Provider is entitled to suspend or terminate the Customer's use of the Service if the Customer fails to comply with any of its obligations under this clause 4.

4.7 If the case of third party involvement including existing Customer suppliers or suppliers nominated by the Customer, the Customer agrees and undertakes to ensure that all necessary information is communicated to all parties involved in the project or work to be carried out. The Service Provider is not responsible for briefing all parties unless stated in the Order Confirmation.

4.8 The client will not request or permit anyone other than the Service Provider to modify or interfere with the Work unless stated in the order confirmation. Failure to comply with this clause can result in the customer being responsible for any costs to fix or amend Work.

4.9 The customer is responsible for providing the Service Provider with remote access to all relevant systems to enable the Service Provider to perform and deliver the Work.

4.10 The customer is responsible for gaining permission to use Intellectual Property not owned by the Customer. The Service Provider takes no responsibility for such undertakings.

4.11 The Customer is responsible for notifying the Service Provider as soon as reasonably possible in the event of any problem with the service, together with such information as the service provider may request.

## **5. Indemnification**

5.1 The Customer shall indemnify the Service Provider and keep the Service Provider indemnified against any liability to any third party arising out of or connected with the Customer's use of the Service.

5.2 The Customer hereby indemnifies and holds harmless the Service Provider against all claims, demands, losses, damages, costs or expenses howsoever arising incurred by the Service Provider in connection with the Agreement as a result of a breach by the Customer of any provision of this Agreement, law or regulation and/or as a result of any third party legal action or threatened action in relation to Intellectual Property Rights infringement whatsoever and howsoever arising. Without prejudice to the foregoing generality the Customer indemnifies and holds harmless the Service Provider from any and all claims, demands, losses, damages, costs or expenses arising out of the Customer's failure to obtain copyright or other intellectual property rights or other releases or permissions with respect to the logo or any other materials supplied to the Service Provider.

## **6. Service charges**

6.1 Subject to any special terms which we may agree with you in the Order Confirmation or otherwise in writing Charges for the Service shall be based upon the Customer paying 50% of the Contract Price upon acceptance of the Customer's order with the remaining 50% payable on completion.

6.2 Initial charges shall be invoiced to the Customer on commencement of Service including, however payment for third party services must be received prior to the commencement of the related work.

6.3 The Service Provider will not be held responsible for any delay to the Service if initial payment is not received pursuant to clauses 6.1 or 6.2 hereof. Subsequent expediting of service delivery following late payment may incur additional costs due to be payable by the customer.

## **7. Terms of Payment**

7.1 Payment of all invoices will be due within 30 days of the date of each invoice issued by us to you unless specified in the Order Confirmation.

7.2 Time of payment shall be of the essence of the Agreement. You shall not be entitled to set off or withhold any payment for any reason whatsoever.

7.3 If you fail to make payment within the period specified in clause 7.1 then, without prejudice to any other right or remedy available to us, we shall be entitled to:-

7.3.1 Suspend any further service provision to you and/or suspend performance of the Services; and/or

7.3.2 cancel the Agreement; and/or

7.3.3 charge you interest on the amount unpaid, at the rate of 4 per cent per annum above the Royal Bank of Scotland plc base rate from time to time, until payment is made.

7.4. The Customer shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to the Service Provider.

7.5 If the Customer's cheque is returned by the bank as unpaid for any reason, The Service Provider reserves the right to levy a "returned cheque" charge.

7.6 If you are late in making a payment under this Agreement for more than 45 consecutive days or more, we reserve the right to factor your Customer Agreement with a reputable factoring agency and you shall reimburse us on demand for all costs, expenses and losses associated therewith (including lost profit).

7.7 With regard to payments agreed through the Service Provider's subscription services, all payments are to be made on the 1<sup>st</sup> of the month and every month thereafter for the duration of the subscription services as set out in the Order Confirmation. The first payment shall be paid in advance of Service commencement.

7.8 In the event that the Customer prematurely cancels the Agreement or any portion thereof, the Service Provider shall be entitled to payment of 50% of the Contract Price or the total sum of expenses incurred by the Service Provider, at the sole discretion of Service Provider. Without prejudice to the foregoing, all third party charges and charges for subscription services are non-refundable in the event of early cancellation by the Customer.

## **8. Termination**

8.1 The Service Provider shall be entitled to suspend or to terminate the Service in accordance with clause 7.3 hereof.

8.2 Without prejudice to any other rights to which it may be entitled, The Service Provider or the Customer may terminate this Agreement by written notice if the other party commits any material breach of any of the terms of the Agreement and the breach remains un-remedied after thirty days of the defaulting party being notified by the other party of the breach and of the other party's intention to terminate unless the breach is remedied.

8.3 The Service Provider may terminate provision of the service immediately if the Customer takes or suffers any action on account of debt or is insolvent.

8.4 The Service Provider will not tolerate duplicity, deceit or pretence regards the parties involved with the service provided, or in any way abusing the Service, reserving the right to terminate services as a result of such behaviour.

## **9. Contract Amendments**

9.1 Should the Customer require a change in the nature, scope or timing of the Service or in or any other aspect of this Agreement, such change shall be requested in writing. The Service Provider shall advise the Customer of the effects including any increase in the Service charges which may result and the Agreement shall be modified to reflect such changes including to the Service charge and/or duration which may be agreed.

9.2 Where the customer requires further amendments to the Service or the Work we

charge a standard charge of £50.00 per hour (plus VAT and outlays). Such services will be generally available between 9am and 5pm, Monday to Friday (excluding public holidays).

## **10. Disclaimer and Limitation of Liability**

10.1 The Customer uses the Service at its own risk and in no event shall the Service Provider be liable to the Customer for any direct, consequential, incidental or special damage or loss of any kind (except personal injury or death resulting from the Service Provider' negligence) including, but not limited to, loss of profits, loss of contracts, business interruptions, loss of or corruption of data or the Customer's inability to use the Service, however caused and whether arising under contract or tort, including negligence or otherwise except as expressly provided herein.

10.2 If any exclusion, disclaimer or other provision contained in this Agreement is held to be invalid for any reason by a court of competent jurisdiction and The Service Provider becomes liable thereby for loss or damage that may lawfully be limited, such liability whether in contract, tort (including negligence) or otherwise, will not exceed the total charges paid by the Customer in the one month preceding such liability arising.

10.3 The Service Provider shall have no liability for delay in the provision of the Service or for any effect upon the quality of the Service caused by external activities, third party failures or problems suffered as a result of the Customer's internal communication or the accessibility or cooperation of the Customer.

10.4 Additional costs may be due and payable by the Customer as a result of requests for requirements additional to the Services set out in the Order Confirmation. The Service Provider reserves the right to charge for extra hours not originally agreed and set out in the Order Confirmation

## **11. Force Majeure**

11.1 The Service Provider shall not be liable to you or be deemed to be in breach of the Agreement by reason of delay in performing, or any failure to perform, any of our obligations in relation to the Services, if the delay or failure was beyond our reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond our reasonable control:

11.1.1 act of god, explosion, flood, tempest, fire or accident; weather.

11.1.2 war or threat of war, sabotage, pandemic flu or virus, insurrection, civil disturbance or requisition;

11.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority;

11.1.4 import or export regulations or embargoes;

11.1.5 strikes, lock-outs or other industrial actions, power cuts or trade disputes (whether involving our employees or of a third party); or

11.1.6 difficulties in obtaining the System, labour, fuel, parts or machinery.

11.17 technical problems, external circumstances preventing suppliers delivering against deadlines or preventing delivery of 3<sup>rd</sup> party against agreed commitments.

## **12. Confidentiality**

12.1 Each party will keep confidential any Confidential Information disclosed to it by the other. Neither party will disclose any Confidential Information to any third party, save to its agents, subcontractors, advisers or to an employee who needs to have access to such Confidential Information in connection with the performance of any obligations under the Customer Agreement, PROVIDED THAT the disclosing party will be responsible for ensuring that any person to whom it makes any such disclosure complies with this Clause 12.

## **13. Intellectual Property rights and ownership**

13.1 Unless otherwise agreed in writing, the content management systems, all interfaces, navigational devices, menus, menu structures or arrangements, icons, help, all operational instructions, scripts, cgi applications, software, programming/source code, and all other components of any source or object computer code that comprises the Website, all literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the content and design elements used or developed and all software, products and results of the Service remain the property of the Service Provider who shall retain full ownership rights and all intellectual property rights.

13.2 Copyright and other intellectual property rights in the final artwork shall remain vested in the Service Provider unless otherwise agreed on writing. Upon written confirmation by the Service Provider that final payment in terms of the Agreement has been received the Service Provider hereby grants to the Customer a nonexclusive, nontransferable (other than the right to sublicense such uses to the Customer's Web hosting or Internet Service Provider), perpetual, worldwide license to use the final artwork which includes the text, graphics, animation, audio components and digital components contained within the finished Website, in accordance with this Agreement, however no rights of ownership are conveyed unless this has been specifically agreed in writing. The Customer specifically agrees not to crop, distort, manipulate, reconfigure, create derivative works or extract portions or in any other manner alter the final artwork.

13.3 Nothing in this Agreement shall be taken to prevent the Service Provider from using any expertise acquired or developed during the performance of this Agreement in the provision of services to other parties. The Service Provider retains right to use IP content for marketing use.

## **14. Privacy**

14.1 The parties acknowledge that the images of individuals appearing in videos and/or photographs produced as part of the Service will constitute personal data in terms of the Data Protection Act 1998 ("the Act"). In processing such personal data the Service Provider is a data processor in terms of the Act and such processing is at the behest of and under the direction of the Customer. The Customer hereby acknowledges its obligations as a data controller in terms of the Act and warrants and represents to the Service Provider that it has discharged and shall discharge its obligations in terms thereof and the Customer shall hold the Service Provider harmless from any claims by any third party relating thereto.

14.2 Any personal data (as defined in the Act) provided by you to us shall at all times remain your property and we shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or

destruction of such Personal Data, PROVIDED THAT we reserve the right to disclose to the police, the fire authorities, any other relevant authority, our insurance company and any of their representatives details of the records kept by us.

## **15. Disputes**

Should any dispute arise in connection with this Agreement, the parties shall attempt to settle same by negotiation however should the dispute not be resolved within 30 days of the first intimation of the dispute then parties shall attempt to settle it by Mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

## **16. Assignment**

Neither party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

## **17. Notices**

17.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by this Agreement shall be deemed to have been duly given and received:

17.1.1 if personally delivered, upon delivery at the address of the relevant party;

17.1.2 if sent by first class post, two business days after the date of posting;

17.1.3 if by email, when sent;

provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given or made after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

17.2 Any notice personally delivered or sent by first class post shall be delivered to the address of the relevant party set out in the Order Confirmation for the Customer and on the The Service Provider Web site for the Service Provider,

## **18. General**

18.1 Failure or delay by The Service Provider in enforcing any term of the Agreement shall not be construed as a waiver of any of its rights under it.

18.2 The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.

18.3 The construction, validity and performance of this Agreement shall be governed by Scots Law and the parties submit themselves to the non-exclusive jurisdiction of the Scottish Courts.