

**Noisegate Media Ltd**  
**Web Development Terms**

## Web Development Terms

Please read these Web Development Terms carefully, as they set out our and your legal rights and obligations in relation to our web development services.

### 1. Definitions and interpretation

#### 1.1 In the Agreement:

**"Acceptance Criteria"** has the meaning given to it in Clause 5.2;

**"Acceptance Period"** means the period of 10 Business Days beginning on the date of actual delivery of the Website to the Customer;

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**"Agreement"** means the agreement between the Developer and the Customer incorporating these Web Development Terms and the Proposal, and any amendments to it from time to time;

**"Business Day"** means any week day, other than a bank or public holiday in England;

**"Business Hours"** means between 09:00 and 17:30 London time on a Business Day;

**"Charges"** means the amounts payable by the Customer to the Developer under or in relation to the Agreement (as set out the Proposal);

**"Confidential Information"** means:

- (a) any information supplied by one party to the other party (whether supplied in writing, orally or otherwise) marked as "confidential", described as "confidential" or reasonably understood to be confidential;
- (b) the terms (but not the existence) of the Agreement;

**"Control"** means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

**"Customer"** means the customer for services under the Agreement as specified in the Proposal;

**"Customer Works"** means the works and materials provided to the Developer by the Customer, or by any third party acting for or on behalf of the Customer, for incorporation into the Website;

**"Defect"** means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of the Website but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents or sub-contractors;
- (b) an incompatibility between the Website and any other application, program or software (other than the Customer Works and the Third Party

Works).

**"Delivery Date"** means the date for delivery of the Website specified in the Proposal;

**"Developer"** means Noisegate Media Ltd a limited company incorporated in England and Wales registration number 6142227 having its registered office at Unit 19 Rigby Close, Heathcote Industrial Estate, Warwick CV34 6TH;

**"Design Elements"** means the visual appearance of the Website (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Website) together with all mark-ups and style sheets comprised in or generated by the Website, but excluding:

- (a) the Customer Works; and
- (b) the Third Party Works;

**"Effective Date"** means the date when the Developer sends to the Customer its written confirmation that the Agreement is agreed, following the Customer's acceptance of the Proposal and these Web Development Terms;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998;

**"Proposal"** means the proposal document issued by the Developer detailing the scope of the Services and other matters relating to the Agreement;

**"Services"** has the meaning given to it in Clause 3.1;

**"Software Elements"** means the Website excluding:

- (a) the Design Elements;
- (b) the Customer Works; and
- (c) the Third Party Works;

**"Third Party Works"** means the works and materials comprised in the Website, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Works);

**"Term"** means the term of the Agreement;

**“Unlawful Content”** has the meaning given to it in Clause 7.1;

**“Website”** means the website or web application to be developed by the Developer for the Customer under the Agreement; and

**“Year”** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
  - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.
- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

## **2. Term**

The Agreement will come into force on the Effective Date and will continue in force until the acceptance of the Website by the Customer in accordance with Clause 5, upon which it will terminate automatically, unless terminated earlier in accordance with Clause 14.

## **3. The Services**

- 3.1 The Developer will:
  - (a) design and deliver the Website;
  - (b) incorporate the Customer Works and Third Party Works into the Website;
  - (c) keep the Customer informed of the progress of the Website's development; and
  - (d) provide the Customer with reasonable access to the Website during the Term;(the **“Services”**).
- 3.2 The Developer will use all reasonable endeavours to perform the Services in accordance with the timetable set out in the Proposal; however, the Developer does not guarantee that that timetable will be met.

## **4. Customer obligations**

- 4.1 The Customer will provide the Developer with:
  - (a) such co-operation as is required by the Developer (acting reasonably) to

enable the performance by the Developer of its obligations under the Agreement; and

- (b) all information and documents required by the Developer (acting reasonably) in connection with the provision of the Services.

4.2 The Customer will be responsible for procuring any third party co-operation reasonably required by the Developer to enable the Developer to fulfil its obligations under the Agreement.

## 5. Delivery and acceptance

5.1 The Developer will use all reasonable endeavours to deliver the Website to the Customer for acceptance testing on or before the Delivery Date.

5.2 During the Acceptance Period, the Customer will carry out acceptance tests to determine:

- (a) whether the Website conforms in all material respects with the specification of the Website in the Proposal; and

- (b) whether the Website has any Defects;

(the "**Acceptance Criteria**").

5.3 If the Website meets the Acceptance Criteria, the Customer will send to the Developer a written notice during the Acceptance Period confirming acceptance of the Website.

5.4 If the Website does not meet the Acceptance Criteria:

- (a) the Customer will send to the Developer a written notice during the Acceptance Period setting out in detail the respect(s) in which the Website does not meet the Acceptance Criteria; and

- (b) the Developer will have a further remedial period (of 20 Business Days) to modify the Website so that it meets the Acceptance Criteria.

5.5 The Website will be deemed to have been accepted by the Customer if:

- (a) the Customer does not give any notice to the Developer under either Clause 5.3 or Clause 5.4 during the Acceptance Period; or

- (b) the Customer publishes the Website or uses the Website for any purpose other than development and/or testing.

## 6. Third Party Works

Any licence fees for Third Party Works are included in the Charges (unless the parties agree otherwise).

## 7. Unlawful Content

7.1 The Customer will ensure that the Customer Works do not infringe any applicable laws, regulations or third party rights ("**Unlawful Content**").

7.2 The Customer will indemnify and will keep indemnified the Developer against all

damages, losses and expenses (including legal expenses) arising as a result of any claim that the Customer Works constitute Unlawful Content, or any legal proceedings relating to such a claim.

## **8. Charges and payment**

- 8.1 The Developer will issue invoices for the Charges to the Customer on the relevant invoicing dates set out in the Proposal, or (if earlier) upon the acceptance of the Website by the Customer.
- 8.2 The Customer will pay the Charges to the Developer within 30 days of the date of issue of an invoice issued in accordance with Clause 8.1.
- 8.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 8.4 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Developer to the Customer from time to time).
- 8.5 If the Customer does not pay any amount properly due to the Developer under or in connection with the Agreement, the Developer may:
  - (a) charge the Customer interest on the overdue amount at the rate of 4% per year above the base rate of Royal Bank of Scotland Plc from time to time (which interest will accrue daily until the date of actual payment and will be compounded quarterly); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## **9. Intellectual Property Rights**

- 9.1 From the date of acceptance of the Website by the Customer, the Developer hereby assigns to the Customer with full title guarantee all its Intellectual Property Rights in the Design Elements. These rights are assigned for the whole term of such rights together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.
- 9.2 All Intellectual Property Rights in the Software Elements will, as between the parties, be the property of the Developer and, from the date of acceptance of the Website by the Customer, the Developer grants to the Customer a non-exclusive worldwide licence to use the Software Elements in connection with the Website, subject always to the other terms of the Agreement, and providing the Customer must not:
  - (a) sell, resell, rent, lease, supply, distribute or redistribute the Software Elements;
  - (b) use the Software Elements in connection with any website, web application, script, computer program or software (other than the Website); or
  - (c) alter or adapt or edit the Software Elements.

and the Customer may only sub-license the rights licensed under this Clause for the limited purposes, and subject to the express restrictions, specified in this

Clause.

- 9.3 The Third Party Works will be either (at the option of the Developer / as agreed between the parties):
- (a) supplied in accordance with the relevant licensor's standard terms for online use;
  - (b) supplied on licence terms notified by the Developer to the Customer; and/or
  - (c) sub-licensed by the Developer to the Customer on terms notified by the Developer to the Customer; and/or
  - (d) sub-licensed by the Developer to the Customer on the basis of a non-exclusive, worldwide, royalty-free licence to use the Third Party Works in connection with the Website.
- 9.4 Notwithstanding any other provision of the Agreement, the assignments and licences granted by the Developer under the Agreement are subject to the payment by the Customer of all amounts owing to the Developer under the Agreement in full and on time. In the event that the Customer owes any amount to the Developer under the Agreement and fails to pay that amount to the Developer within 14 days of receiving a notice:
- (a) requiring it to do so; and
  - (b) specifying that the assignments will revert and the licences will terminate if the amount repays unpaid,
- then the Developer may immediately revert the assignments and terminate the licences granted by the Developer under the Agreement by giving written notice of reversion and termination to the Customer.
- 9.5 Subject to Clause 9.4, upon and following the termination of the Agreement, any licence granted by the Developer to the Customer will continue notwithstanding termination, and this Clause 9 will continue to apply.
- 9.6 Without prejudice to Clause 9.7, the Developer waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Website arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.
- 9.7 The Developer may include the statement "Website Design by Noisegate Media" together with a link to the Developer's website on each page of the Website in a position and in a form to be agreed by the parties. The Customer will retain any such credit and link in any adapted version of the Website, and the Customer will (and will only) remove any such credit and link from the Website at the Developer's request.

## **10 Warranties**

- 10.1 The Customer warrants to the Developer that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 10.2 The Developer warrants to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;
  - (b) that it will perform its obligations under the Agreement with reasonable care and skill;
  - (c) that the use of the Website (excluding the Customer Works) by the Customer in accordance with the terms of the Agreement will not infringe the Intellectual Property Rights of any third party; and
  - (d) that the Website will continue to operate without any Defects for a period of 3 months from the date of acceptance of the Website (and if the Website does not so operate, the Developer will, for no additional charge, carry out any work necessary in order to ensure that the Website operates without any Defects during this period).
- 10.3 The Customer acknowledges that the Developer has designed the Website to work with the web browser technology specified in the Proposal, and the Developer does not warrant that the Website will work with any other web browser technology.
- 10.4 The Customer further acknowledges that the Developer does not purport to provide any legal advice under the Agreement or in relation to the Website and the Developer does not warrant that the Website will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.
- 10.5 All of the parties' liabilities and obligations in respect of the subject matter of the Agreement are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

## **11 Liability**

- 11.1 Nothing in the Agreement will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
  - (b) fraud or fraudulent misrepresentation on the part of that party; or
  - (c) any other liability which may not be excluded or limited under applicable law.
- 11.2 Subject to Clause 11.1, each party's liability to the other party under or in connection with the Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:
- (a) neither party will be liable for any:
    - (i) loss of profits, income or anticipated savings,
    - (ii) loss or corruption of any data, database or software,
    - (iii) reputational damage or damage to goodwill;
    - (iv) loss of any commercial opportunity, or

- (v) indirect, special or consequential loss or damage;
- (b) neither party will be liable for any losses arising out of a Force Majeure Event; and
- (c) each party's liability in relation to any event or series of related events will in no circumstances exceed the fee due for the provision of the services.

## **12. Data protection**

- 12.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Developer under the Agreement.
- 12.2 The Developer warrants that:
  - (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Developer on behalf of the Customer; and
  - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Developer on behalf of the Customer.

## **13. Confidentiality and publicity**

- 13.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 13. (For the purposes of this Clause 13, the terms of the Agreement constitute the Confidential Information of each party.)
- 13.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 13.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 13.4 These obligations of confidentiality will not apply to Confidential Information that:
  - (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
  - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
  - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body or a stock exchange.
- 13.5 Neither party will make any public disclosure relating to the subject matter of the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

## **14. Termination**

- 14.1 Either party may terminate the Agreement at any time by giving at least 30 days' written notice to the other party.
- 14.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of the Agreement, and:
    - (i) the breach is not remediable; or
    - (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - [(b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach)].
- 14.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement); or
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

## **15. Effects of termination**

- 15.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7, 8.5, 9, 10, 11, 13, 15, and 16.3 to 16.13.
- 15.2 Termination of the Agreement will not affect either party's accrued rights (including the Developer's accrued rights invoice for and to be paid the Charges) as at the date of termination.

- 15.3 If the Agreement is terminated under Clause 14.1, or by the Customer under Clause 14.2 or 14.3 (but not in any other case):
- (a) the Developer will promptly provide to the Customer an electronic copy of the Website;
  - (b) the Developer will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, subject to payment of the Developer's reasonable expenses; and
  - (c) the Customer will be entitled to a refund of any Charges paid by the Customer to the Developer in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Developer (such amount to be calculated by the Developer using any reasonable methodology).
- 15.4 Save as provided in Clause 15.3(c), the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Developer.

## **16. General**

- 16.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by first class post, or sent by email, for the attention of the relevant person, and to the relevant address, fax number or email address given below (or as notified by one party to the other in accordance with this Clause).

The Developer  
*Noisegate Media Ltd, Unit 19 Rigby Close,  
Heathcote Industrial Estate, Warwick CV34 6TH*

The Customer  
The addressee, address, and email address specified in the Proposal

- 16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
  - (b) where the notice sent by first class post, 48 hours after posting; and
  - (c) where the notice sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
- 16.3 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 16.4 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the

relevant Clause will be deemed to be deleted).

- 16.5 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 16.6 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 16.7 Each party may freely assign its rights and obligations under the Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 16.8 The Developer may subcontract any of its obligations under the Agreement to any third party, subject to obtaining the Customer prior written consent (not to be unreasonably withheld or delayed).
- 16.9 Neither party will, without the other party's prior written consent, either during the term of the Agreement or within 6 months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the other party who has been involved in the performance of the Agreement.
- 16.10 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 16.11 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 16.12 The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause 11.1, each party acknowledges that no representations or promises not expressly contained in the Agreement have been made by or on behalf of the other party.
- 16.13 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.