



Terms & Conditions

Ongoing Services

Terms & Conditions - Ongoing Services

1. Definitions & Interpretation

1.1. In these Terms and Conditions, the following words and phrases shall have the following meanings:

"Client" means the person, firm or company detailed in our Quotation, to which the Services are to be supplied. Where the person entering into the Contract is doing so on behalf of a business, that person confirms they have the authority to contractually bind and enter into the Contract on behalf of that business and the business shall be the Client in the context of this Contract;

"Company" means Zinc Digital Business Solutions Ltd, a company registered in England under number 05235293, of 22-24 Harborough Road, Kingsthorpe, Northampton, NN2 7AZ;

"Contract" means the legally binding agreement formed upon acceptance by the Client as detailed in clause 2 for our provision of the Services, which shall incorporate and be subject to these Terms and Conditions.

"Fee" means our charge for the Services as set out in the Quotation;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Response Time", where applicable, means the time between us receiving your request and the first contact from us;

"Services" means the support services, marketing services, domain and hosting services, and/or any other ongoing services to be supplied by us as detailed in our Quotation;

"Start Date" means the date for the start of the Services as set out in the Contract; and

"Term", unless otherwise stated in the Contract, means an initial term of one year from the Start Date and any subsequent renewed term.

1.2. Unless the context otherwise requires, each reference in this Contract to:

1.2.1. "we", "us" and "our" is a reference to the Company;

1.2.2. "you" and "your" is a reference to the Client;

1.2.3. "writing" and "written" includes emails;

1.2.4. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.5. "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.6. a clause is a reference to a clause of these Terms and Conditions;

1.2.7. a "Party" or the "Parties" refer to the parties to these Terms and Conditions.

1.3. The headings in these Terms and Conditions are for convenience only and do not affect their interpretation.

1.4. Any reference to a party includes its employees, agents and sub-contractors.

2. The Contract

2.1. We will provide a Quotation for all ongoing Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between the Company and the Client and includes the acceptance of these Terms and Conditions, which shall apply between us.

2.2. These Terms and Conditions shall:

2.2.1. apply to and be incorporated in the Contract;

2.2.2. apply to all dealings relating to the Services being supplied by us;

2.2.3. and prevail over any terms or conditions contained in or referred to by the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing, subject to clause 11 below.

2.3. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on us unless it is in writing and signed by a duly authorised representative of ours.

2.4. The Client shall be responsible for the accuracy of any information submitted to us and for ensuring that our Quotation reflects the requirements of the Client. Our Quotation is based on the information provided to us at the time of its preparation. Should any errors or discrepancies become evident which affect our order value, we reserve the right to make adjustments to it.

2.5. Our Quotation shall constitute our entire scope of works but shall be subject to amendment as detailed below.

2.6. Our Quotation will be valid for a period of 14 days only unless otherwise stated, and we may withdraw it at any time by giving notice to the Client.

3. Term

3.1. The Services shall commence on the Start Date and shall continue for an initial minimum term of 12 months unless otherwise stated in the Contract. Thereafter, the Contract will be automatically renewed, with the exception of the price, on these same Terms and Conditions, on a rolling 12 month basis, unless a written notice to terminate is given by either party in accordance with clause 10 below. Such notice is to be given a minimum of 90 days before the end of the then-current Term, and shall be effective only at the end of that Term. We will notify the Client of any such price increase in accordance with these Terms and Conditions.

4. Supply of Services

4.1. All Services will be carried out during our normal business hours of 9am – 5pm, Monday to Friday excluding bank holidays in England, unless otherwise stated in the Quotation. Any works required outside of our normal business hours shall incur additional costs. We will, however, endeavour to keep disruption to a minimum.

4.2. We warrant to the Client that all Services supplied under this Contract will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.

4.3. We will supply the Services to the Client in accordance with the specifications set out in the Contract.

4.4. Where the Services include a Response Time, we will use our reasonable endeavours to respond to a valid request from an authorised representative of the Client's within the Response Time detailed in the Contract. However, the response times are only a guide and time will not be of the essence in the performance of these obligations;

4.5. The software we provide is on an agile methodology basis,

which means it is always on the latest version and does not need to be manually updated. This does mean, however, that occasionally the system can go down. We make no warranty that any Services provided will be uninterrupted or error-free.

5. Service Desk Support

5.1. Where we have included for service desk support, our support services include for a set number of hours to be used on a monthly basis over the Term of the Contract. Any such hours must be used within the relevant month, as unused hours cannot be carried over.

5.2. Any hours required over and above the allocation will be chargeable at our standard rates applicable at the time.

6. Marketing Support

6.1. Where we have included for marketing support, we will provide our professional advice and recommendations in relation to the Services but we cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor can we guarantee the success or outcomes of any marketing campaign or any of the other Services provided. Further, we shall not be liable for any consequences should any professional advice not be taken.

6.2. Where we have agreed to carry out pay-per-click advertising campaigns on the Client's behalf, the Client will be required to agree to the relevant advertising campaign website's terms and conditions and a separate contractual relationship will be created between the Client and the advertising website.

7. Client's obligations

7.1. The Client shall:

7.1.1. provide such reasonable information and assistance as we may request, to enable us to perform the Services;

7.1.2. appoint a primary contact to liaise with us in connection with the Services and will ensure that only personnel authorised by us modifies, configures, maintains and/or repairs the Software;

7.1.3. ensure all personnel using the Services do so in an appropriate way.

7.1.4. not provide the Services to any third party;

7.1.5. act in accordance with any and all reasonable instructions issued by us in relation to the Services. We shall not be liable for any failure to provide the Services or any part thereof which arises out of the Client's failure to follow any such instructions;

7.1.6. virus-check all data and material supplied to us;

7.1.7. keep strong passwords and ensure they are regularly updated and secure from third parties;

7.1.8. obtain and maintain all necessary licences, permissions and consents in connection with the Services;

7.1.9. report faults promptly to us; and

7.1.10. not transmit, store or distribute any material through the Services that is unlawful, harmful, threatening, defamatory, obscene, harassing, offensive, sexually explicit, illegal (or that facilitates illegal activity), or that promotes unlawful violence or discrimination.

8. Payment

8.1. All Services provided under this Contract (except for domain name registration) will be invoiced on a monthly basis throughout the Term of the Contract

8.2. Domain names provided under this Contract are payable annually in advance and will be invoiced the relevant month in advance of the

domain renewal date.

8.3. If we either provide any services not included within the Services or provide the Services outside of our normal business hours at the request of the Client, then we shall charge for the same at our then current hourly rate.

8.4. All invoices are payable within 30 days from the date of invoice, without set-off, withholding or deduction.

8.5. In addition, the Client shall reimburse us for any and all actual, reasonable travel expenses, any incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.

8.6. Time for payment shall be of the essence of the Contract. If the Client fails to make payment in full on the due date or fails to comply with the Client's obligations as listed in clause 4, then without prejudice to any other right or remedy available to us, we shall be entitled to:

8.6.1. appropriate any payment made by the Client to any outstanding sum;

8.6.2. charge interest on the amount outstanding from the due date to the date of receipt by us (whether before or after judgment), at the annual rate of 8% above the then current Bank of England base lending rate, accruing daily and compounded quarterly;

8.6.3. suspend all further provision of Services until the Client remedies the default;

8.6.4. shut the website down and/or reuse the domain name at our sole discretion, should any payments remain outstanding for a period of 3 months or more;

8.6.5. not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and

8.6.6. be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from the Client's default.

9. Variation

9.1. Where our Fees have been calculated on a per-user basis, in the event that the number of users increases, then we shall adjust our pricing accordingly, commencing from the date the number of users increased. Should the Client wish to decrease the number of users, the Client must first discuss this with us. We reserve the right to adjust our price per user accordingly.

9.2. If the Client wishes to vary any other part of the Contract, the request shall be sent to us in writing. We shall respond to the Client as to whether we are prepared to agree to the change and, if so, details of the cost of the change and any effect on any other aspect of the Contract, including any change in timescales. The Client may accept such proposal within such time as we may specify or, if none, within 14 days, failing which it shall be deemed rejected. Pending acceptance or rejection, we will continue to perform our obligations under the Contract without reference to the request.

9.3. If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the Services, we shall notify the Client immediately. We shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

9.4. Any agreed variation or amendment will be carried out in accordance with these terms and conditions and any price increase necessitated as a result of an agreed variation or amendment shall be payable in accordance with the terms for payment herein.

10. Termination

10.1. The Client may terminate this Contract by giving us a minimum of 90 days' notice before the end of the then-current Term. Such notice shall be effective only at the end of that Term.

10.2. We may terminate this Contract forthwith:

10.2.1. if the Client fails to pay any sum due under the terms of this Contract and such sum remains unpaid for 14 days after we give written notice that such sum has not been paid;

10.2.2. if we give the Client 30 days' written notice, whereby there will be no continuing liability by either Party;

10.3. Either Party may terminate this Contract:

10.3.1. forthwith on giving notice in writing to the other if one party commits any serious breach of any term of this Contract and (in the case of a breach capable of being remedied) shall have failed, within 7 days after the receipt of the request in writing from the other to do so, to remedy the breach; or

10.3.2. if the other party goes into bankruptcy, liquidation or administration either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation), if a receiver is appointed in respect of the whole or any part of its assets, or if the other party ceases, or threatens to cease, to carry on business.

10.4. Upon termination of this Contract for any reason, any sum owing by either Party to the other under any of the provisions of this Contract shall become immediately due and payable and we shall immediately cease the provision of the Services.

10.5. Upon termination of this Contract for any reason, if we are holding any data for the Client including, but not limited to, backups, websites hosted by us, emails hosted by us and any other live data, we will retain such data for a period of 30 days from the date of termination. It is the Client's responsibility to retrieve such data if required within this timeframe. After 30 days, any such data will be securely destroyed.

10.6. Termination of the Contract, howsoever arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

11. Limitation of Liability

11.1. The following provisions set out our entire liability (including any liability for the acts or omissions of our employees) to the Client in respect of any breach of the Contract and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

11.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

11.3. Nothing in these terms and conditions excludes, limits or seeks to exclude or limit our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation.

11.4. Subject to clause 11.3:

11.4.1. we shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

11.4.2. our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the fees paid by the Client for the Services during the 12 months preceding the date on which the alleged claim

arose;

11.4.3. we accept no responsibility whatsoever for third party services, including, but not limited to, the website not functioning properly on certain browsers or plug-ins not responding; and

11.4.4. we accept no responsibility whatsoever where our Services have been provided on a free basis.

12. Intellectual Property Rights

12.1. The Client warrants that any document, logo or instruction furnished or given by them shall not cause us to infringe any letter patent, registered design or trade mark in the execution of these Services.

The Client shall indemnify and keep us indemnified against all losses, damages, costs, claims and expenses incurred by us in connection with any claim for infringement of any third party Intellectual Property Rights which results from our use of any document, logo or instruction given to us by the Client.

12.2. The Client shall not be entitled to use any design created during the provision of the Services until they have been handed over by us. Upon completion and handover of the Services, and provided payment is made in accordance with the terms of payment herein, we will extend to the Client any Intellectual Property Rights belonging to us which may subsist in the design created by us. However, we retain all Intellectual Property Rights which may subsist in the software provided by us.

12.3. Any Intellectual Property Rights we may grant shall be automatically revoked if the Client breaches any of these Terms and Conditions or the Software Licence Agreement (copies of which are available on request), or if this Contract is cancelled or terminated in accordance with clause 10 above.

12.4. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of any Intellectual Property Rights. The Client shall immediately bring to the attention of the Company any infringement or suspected infringement of any of the Intellectual Property Rights licensed hereunder of which it is aware and shall at the request and expense of the Company take such action or assist the Company in taking such action as the Company may deem appropriate to protect the Intellectual Property Rights.

13. Confidentiality

13.1. Each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Contract and shall ensure that such employees are subject to corresponding obligations of confidentiality.

13.2. All materials, drawings, specifications or data supplied by us to the Client shall at all times be and remain our exclusive property, but shall be held by the Client in safe custody at its own risk until returned to us, and shall not be disposed of or used other than in accordance with our written instructions or authorisation.

13.3. This clause 13 shall survive termination of the Contract, however caused.

14. No Employment

14.1. Nothing in this Contract shall render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

14.2. Nothing in this Contract shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party shall have the authority to act in the name of or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or

warranty, the assumption of any obligation or liability and the exercise of any right or power).

15. Non-Solicitation

15.1. Neither party shall, during the continuance of the Contract, or within 6 months of its termination or expiry, whether on behalf of itself or any third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause, the party in default shall pay the other a sum equal to six months gross pay of the employee concerned, being a pre-estimate of the cost of recruitment and training a replacement.

16. Data Protection

16.1. If any Personal Data (as defined by the Data Protection Act 1998) is passed to us under this Contract then the parties agree that the Client is the Data Controller and that we are the Data Processor.

16.2. We shall:

16.2.1. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;

16.2.2. implement appropriate measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and

16.2.3. take reasonable steps to ensure the reliability and confidentiality of any of our personnel who have access to the Personal Data.

16.3. We may transfer and store Personal Data outside of the European Economic Area ("EEA"). If this is to occur, we will advise the Client in advance. The Client is entitled to request that Personal Data is not transferred or stored outside of the EEA, however, this would be an additional cost.

17. Force Majeure

17.1. We shall not be liable to the Client for any breach of our obligations under this Contract if such breach is due to an act, event, omission or accident beyond our reasonable control (Force Majeure Event). Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond our reasonable control.

17.2. If a Force Majeure Event occurs, we shall inform the Client as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure Event and resume performance of our obligations as soon as possible.

18. Waiver

18.1. No failure or delay by either Party in exercising any of its rights under this Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

19. Entire Agreement

19.1. This Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

19.2. None of our employees are authorised to make any contractually binding representations concerning the Services. In entering into the Contract, the Client acknowledges that it does not rely on, and waives any claim for breach of, any such statement, representation, assurance or warranty (whether made negligently or innocently) which has not been confirmed in writing by an authorised officer of ours.

20. Assignment

20.1. The Client shall not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2. We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under the Contract, without the consent of the Client.

21. Third Party Rights

21.1. The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

22. Notices

22.1. Any notice required to be given pursuant to this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post or by e-mail to the address of the party as set out in these terms and conditions, or such other address as may be notified by one party to the other.

22.2. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9.00am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An e-mail shall be deemed to have been delivered within 24 hours from the time of being sent, provided that no "non-deliverable" notice is received by the sender.

23. Severance

23.1. In the event that one or more of the provisions of this Contract is found to be unlawful, invalid or otherwise unenforceable, that/ those provision(s) shall be deemed severed from the remainder of this Contract. The remainder of this Contract shall be valid and enforceable.

24. Dispute Resolution Procedure

24.1. Any complaint or issue regarding the Services or any invoice must be made in writing within 30 days from the date of the issue or from the date of invoice.

24.2. In the event of a dispute, the directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, meet promptly in good faith to resolve the dispute.

24.3. If the dispute is not resolved in accordance with clause 24.2, the dispute shall be referred to mediation and the mediator shall be appointed by the Centre for Dispute Resolution.

24.4. If no mediation takes place within 28 days of the request under clause 24.3, then the matter shall be referred to an expert, to be appointed, in default of agreement, on the request of either party to the President of the Law Society. He or she shall act as an independent expert and not as an arbitrator and his or her decision (including as to costs) shall, except in the case of manifest error, be final and binding upon us and the Client.

25. Governing law and jurisdiction

25.1. The Contract and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

25.2. Subject to the provisions of clause 24, any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.