



# School Website Design Agency

## Terms & Conditions

WEBSITE DESIGN

BESPOKE CLOUD SOLUTIONS

GRAPHIC DESIGN

BRANDING

DIGITAL MARKETING

SEARCH ENGINE OPTIMISATION

PAY PER CLICK ADVERTISING

EMAIL MARKETING

SOCIAL MEDIA

APP DEVELOPMENT

ADVERTISING

# 1. INTERPRETATION.

**'Company', 'we' or 'us'**, shall mean School Website Design Agency Limited.

**'Client' or 'you'** shall mean the person, firm, school or company who contracts to purchase the Services from the Company.

**'CMS'** the Company's content management system.

**'Conditions'** these terms and conditions.

**'Contract'** the contract between the Company and the Client for the supply of Services in accordance with these Conditions and the Project Plan.

**'Effective Date'** means the date upon which the Client accepts the Proposal by delivering a signed Order in accordance with clause 2.1.

**'Go Live'** the Site going live.

**'Project'** shall mean the provision by the Company of the Services to the Client in accordance with the Project Plan.

**'Project Plan'** a Proposal that has been agreed by the Client in accordance with clause 2.2.

**'Proposal'** the proposal for the Project submitted by the Company to the Client (in whatever form) detailing the specific services to be provided by the Company, the estimated timetable for completion of the Project, the Company's charges and any other information relevant to the Project.

**'Services'** the services to be provided by the Company under the Contract as set out in the Project Plan or any agreed variation thereto.

**'Site'** the website of the Client.

**'Writing'** includes email, handwriting, facsimile and similar means of information transmission.

## 2. BASIS OF CONTRACT.

2.1. Acceptance of the Proposal and the Contract by the Client shall be in writing by means of an Order signed by the Client and submitted to the Company.

2.2. Once a Proposal has been approved by the Client under clause 2.1, it shall be deemed to constitute a Project Plan for the purposes of the Contract, shall be binding on the parties and shall form part of, and be governed by, the provisions of, the Contract.

2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 If there is any inconsistency or conflict between the provisions of any Project Plan and these Conditions, the Conditions shall prevail to the extent of that inconsistency or conflict save that if a Project Plan references a specific clause in the Conditions and states that a provision in the Project Plan shall take precedence over it, the Project Plan shall prevail.

2.5. The Company shall be entitled to assume without further enquiry that Orders signed on behalf of the Client are signed by persons authorised to do so.

# 3. THE COMPANY'S OBLIGATIONS.

## 3.1. The Company shall:

3.1.1 provide the Services with reasonable care, skill and diligence;

3.1.2 use reasonable endeavours to manage and complete the Project in accordance in all material respects with the Project Plan.

3.1.3 use reasonable endeavours to meet the performance dates specified in the Project Plan but any such dates shall be estimates only and time shall not be of the essence of the Contract; and

3.1.4 use personnel who are suitably skilled and experienced to perform tasks assigned to them.

# 4. THE CLIENT'S OBLIGATIONS.

4.1 The Client acknowledges that the Company's ability to provide the Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of any information and data the Client provides to the Company. Accordingly, the Client shall:

4.1.1 provide the Company with access to, and use of, all information, data and documentation reasonably required by the Company for the performance by the Company of its obligations under this Contract and in such medium as the Company shall require; and

4.1.2 be responsible for the accuracy and completeness of information provided to the Company in connection with the provision of the Services, including any specifications provided by the Client.

4.2. The Client undertakes to the Company to keep its log-in details to the CMS confidential at all times and not to disclose such details to any third party.

4.3 The Client agrees and acknowledges that the Company shall be entitled to include a credit line ;°School Website design by School Website;± or similar on the home page of the Site and the Client agrees not to remove any such statement from the Site.

# 5. DEVELOPMENT AND ACCEPTANCE OF SITE.

5.1 Where the Company has undertaken the design and development of the Site, upon completion the Company shall handover the Site to the Client for a period not exceeding 20 days for the Client (acting reasonably) to request any changes to the Site and acceptance of the Site shall be deemed to occur upon Go Live.

# 6. CHANGE CONTROL.

6.1 If either party requests a change to the scope or execution of the Services, the Company shall, within a reasonable time, provide a written estimate to the Client of:

- (i) the likely time required to implement the change
- (ii) any variations to the Company's charges arising from the change
- (iii) the likely effect of the change on the Project Plan and
- (iv) any other impact of the change on the terms of the Contract.

6.2 If the Client wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

# 7. CHARGES AND PAYMENT.

7.1. Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Project Plan. The total price shall be paid to the Company in instalments in the amounts and on the dates as set out in the Project Plan. Upon an instalment becoming due, the Company shall invoice the Client for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).

7.2. Any fixed price contained in the Project Plan (unless specifically included) shall exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Company in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Company for the supply of the Services (including all cancellation fees of such third parties arising as a result of late cancellation of such Services by the Client). Such expenses, materials and third party services shall be invoiced by the Company at cost.

7.3. Where additional Services are provided by the Company on an ad hoc basis during the term of the Contract:

7.3.1 the charges payable for such Services shall be calculated in accordance with the Company's standard daily fee rates as amended from time to time;

7.3.2 the Company's standard daily fee rates are calculated on the basis of a seven-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);

7.3.3 the Company shall be entitled to charge at an overtime rate of 30% of the normal rate for part days and for time worked outside the hours referred to in clause 7.3.2 on a pro-rata basis;

7.3.4 the Company shall invoice the Client monthly in arrear for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned. Each invoice shall set out the time spent and provide a detailed breakdown of any expenses and materials and shall be payable within 30 days of the date of the Company's invoice (unless otherwise stated) in full without any set-off, counterclaim, deduction or withholding.

7.4. If the Client fails to make any payment within 7 days of the due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract or suspend any further supply of the Services to the Client.



# 8. LIABILITY.

8.1. Nothing in this Contract shall operate to exclude or limit the Company's liability for any liability which cannot be excluded or limited under applicable law.

8.2. The Company shall not be liable to the Client 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.

8.3. Subject to clause 8.1., the Company's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this Contract or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total charges payable by the Client to the Company under this Contract in that calendar year.

# 9. CONFIDENTIALITY.

9.1. The following definition applies in this clause 9:

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

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

9.2. Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

# 10. INTELLECTUAL PROPERTY RIGHTS.

10.1 All intellectual property rights in the Site (including in the content of the Site but excluding any third party rights or rights in any underlying software or platform of the Company) arising in connection with this Contract shall be the property of the Client, and the Company hereby assigns all such Intellectual Property Rights to the Client.

10.2 All Intellectual Property Rights in any underlying software or platform of the Company (including the CMS) arising in connection with this agreement shall be the property of the Company, and the Company hereby grants the Client a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site (including in respect of the CMS).

# 11. FORCE MAJEURE.

11.1 A party shall not in any circumstances have any liability to the other under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving its workforce or any other party), failure of a utility service, communication or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

# 12. TERM AND DURATION.

12.1 This Contract shall commence on the Effective Date and (subject only to earlier termination pursuant to clause 12.2):

12.1.1 in the case of the Company being engaged to design, develop and host the Site, shall terminate automatically on the third anniversary of the Effective Date;

12.1.2 in the case of the Company being engaged to host the Site, shall continue for 12 months from the date of Go Live (Initial Term) and shall automatically extend for 12 months (Extended Term) at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Term or the relevant Extended Term, to terminate this agreement at the end of the Initial Term or the relevant Extended Term, as the case may be;

12.1.3 in the case of the Company being engaged to provide any other Services, shall continue until either party gives to the other 60 days' written notice to terminate.

12.2 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

12.2.1 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;

12.2.2 the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

12.2.3 the other party has a receiver, manager, administrator or liquidator validly appointed, or it passes a resolution for winding up (otherwise than for the purpose of a solvent amalgamation or reconstruction), or a court makes an order to that effect, or it enters into any composition or arrangement with its creditors, or becomes the subject of a voluntary arrangement or anything analogous to any of the foregoing under the law of any jurisdiction; or

12.2.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On expiry or termination of this Contract, the Company shall promptly return any materials to the Client and shall provide to the Client, upon request and in exchange for a £250.00 administration fee, all of the html/css templates used within the Site.

12.4 Save where the Contract is terminated by the Client pursuant to clause 12.2.3 or 12.2.4 (where the Company shall grant a licence to the Client to enable it to use the CMS via an alternative hosting provider), on termination of this Contract all licences granted by the Company under this Contract shall terminate immediately.

12.5 On termination by the Company under clause 12.2., without prejudice to any other right or remedy available to the Company, any Services supplied but not paid for shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.6 On expiry or termination of this Contract, all provisions of this Contract shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.

# 13. NOTICES.

13.1 Any notice required to be given under this Contract shall be given in writing to the registered address of each party or place as such party may subsequently designate in writing to the other party and shall be sufficiently given if delivered personally, by email or, forwarded by pre-paid first-class post (airmail if overseas) or commercial courier and will be deemed to have been received by the addressee:

13.1.1 in the case of personal delivery, at the time of such delivery;

13.1.2 in the case of communication by post or commercial courier, on the first working day after dispatch in the case of delivery from and to an address in the United Kingdom and 5 working days after dispatch in any other case; and

13.1.3 in the case of electronic mail (i°e-mail±), two working days after the time it left the e-mail gateway of the server (or, if earlier, the time the recipient's e-mail server confirms that such e-mail has been read).

# 14. NON-SOLICITATION.

14.1 The Client undertakes to the Company during the term of the Contract and for one year from termination or expiry (the 'Restricted Period') that it shall not:

14.1.1 solicit or entice away or endeavour to solicit or entice away from the Company any person employed or otherwise engaged by the Company at any time during the previous twelve months, whether or not such person would commit any breach of his contract of employment or engagement by reason of his leaving the service of the Company or terminating his contract with the Company;

14.1.2 employ or otherwise engage any person who was at any time during the previous twelve months employed or otherwise engaged by the Company.

14.2 The Client agrees that, if it employs or engages any person contrary to the provision of clause 14.1, the Client shall be liable to pay to the Company liquidated damages in an amount equal to 40% of the first year's salary of the relevant person.



# 15. GENERAL.

15.1 Neither the Company nor the Client shall assign or transfer or purport to assign or transfer the Contract or the benefits thereof to any other person without the prior consent of the other provided that the Company shall be entitled to subcontract the performance of any part of the Services.

15.2 No variation of these Conditions shall be effective unless authorised in writing by a Director of the Company.

15.3 This Contract shall supersede all other agreements, representations or other warranties made between the Company and the Client, verbally or in writing, prior to the date hereof.

15.4 No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.

15.5 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

15.6 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.

15.7 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

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