

# ORKNET – STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES



## 1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to these Terms:

**Acceptance:** the acceptance or deemed acceptance of the Site by the Client pursuant to clause 4.

**Acceptance Tests:** the tests to be carried out on the Site as set out in clause 4.

**Agreement:** the agreement between the Supplier and the Client comprising these Terms and the Order.

**Applicable Laws:** all laws, rules, regulations and guidance which are in force from time to time, which are applicable to the parties and are relevant to the Agreement which includes, but not limited to, European Union restrictive measures, financial or economic sanctions or the same as implemented by European Union member states.

**Approved Concept:** has the meaning given in clause 8.5.

**Business Day:** a day which is not a Saturday or Sunday or a bank or national holiday in Scotland.

**Change Request:** has the meaning given in clause 6.1.

**Client:** the person or firm who purchases Services from the Supplier as shown in the Order.

**Client Default:** has the meaning given in clause 12.1.

**Client Materials:** the materials provided to the Supplier by the Client from time to time to support the completion of the Services including, but not limited to, text and images.

**Concepts:** has the meaning given in clause 8.5.

**Deliverables:** the products and materials set out in the Order and produced by the Supplier for the Client in relation to the Services.

**Fees:** the payments due to be paid by the Client in respect of the Services performed by the Supplier as set out in the Order.

**Inappropriate Content:** has the meaning given in clause 5.1.6.

**IP Rights:** copyright and related rights, trade marks, business names, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered.

**Non-Supplier Defect:** has the meaning given in clause 4.1.3.

**Order:** the Orknet order form detailing the Services to be supplied by Orknet subject to these Terms.

**Personal Data:** has the meaning given in the Data Protection Act 1998.

**Services:** the services, including the Deliverables and the Website Services (as applicable) to be provided by the Supplier as fully set out in the Order.

**Site:** any website for which the Supplier provides Website Services.

**Supplier:** Orkney Media Group Limited, a company registered in Scotland (registered number SC315893) with a registered office at Hell's Half Acre, Hatson, Kirkwall, Orkney KW15 1GJ.

**Supplier IP Rights:** has the meaning given in clause 8.4.

**Supplier Materials:** has the meaning given in clause 5.1.8.

**Terms:** these terms and conditions as amended from time to time in accordance with clause 14.7.

**Website Services:** the website design, development and hosting services provided by the Supplier as part of the Services and set out in the Order.

1.2 Unless otherwise specified, references to clauses are to the clauses of these Terms. Clause headings are for convenience only and do not affect the interpretation of these Terms.

1.3 References to a party are to a party to the Agreement. A person includes a corporate or unincorporated body.

1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.5 A reference to writing or written includes faxes and emails.

## 2 BASIS OF AGREEMENT

- 2.1 The Client's purchase order constitutes an offer by the Client to purchase the Services as set out in the Order, subject to these Terms. The purchase order shall only be deemed to be accepted when the Supplier issues its written acceptance of the purchase order at which point and on which date the Agreement shall come into existence.
- 2.2 The Agreement constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.
- 2.3 These Terms apply to the Agreement 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. Both the Client and the Supplier acknowledge that any terms or conditions referred to in the Client's purchase order are expressly excluded.

## 3 SUPPLY OF SERVICES

- 3.1 The Supplier shall provide the Services to the Client in accordance with the Order in all material respects, using reasonable care and skill.
- 3.2 The Supplier shall use reasonable endeavours to meet any dates for the Services as the parties may agree, but any such dates shall be estimates only and time shall not be of the essence of the Agreement.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any Applicable Laws or safety requirements, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.
- 3.4 These Terms shall apply to the provision of all Services carried out by the Supplier unless agreed otherwise in writing by both parties.
- 3.5 The Supplier shall be entitled to place its logo on any Site or other Deliverables provided under the Agreement in an appropriate form as may be agreed with the Client.

## 4 WEBSITE SERVICES

### 4.1 Acceptance

- 4.1.1 Once the Supplier has completed any Website Services, the Supplier shall arrange appropriate Acceptance Tests to test the functioning of the Site against the requirements of the Order.
- 4.1.2 The Supplier shall run the Acceptance Tests and the Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. The Supplier shall notify the Client when the Acceptance Tests have been passed.
- 4.1.3 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom the Supplier has no responsibility ("**Non-Supplier Defect**"), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Client in remedying any Non-Supplier Defect by supplying additional services or products. The Client shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.
- 4.1.4 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:
- (a) the Client uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
  - (b) the Client delays the start of the Acceptance Tests or any retests for a period of seven Business Days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests.

### 4.2 Hosting

- 4.2.1 The Client acknowledges that any Site developed by the Supplier as part of the Website Services is designed to be hosted on the Supplier's own dedicated server and that the Supplier shall not be liable for the incompatibility of a Site with any other hosting provider's server.
- 4.2.2 A non-refundable renewal fee for hosting on the Supplier's dedicated server is due on an annual basis on the date set out in the Order.

### 4.3 Domain Name

Any domain name which is provided as part of the Services shall be registered in the Client's name. The Supplier shall be responsible for the continued renewal of the domain name on the Client's behalf after the initial registration period for the domain name has expired. The Supplier shall invoice the Client after each renewal of the domain name has been completed.

## 5 CLIENT'S OBLIGATIONS

- 5.1 The Client shall:
- 5.1.1 be responsible for delivery and collection of the Deliverables subject to the location set out in the Order;
  - 5.1.2 co-operate fully with the Supplier in all matters relating to the Services;
  - 5.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier;
  - 5.1.4 provide the Supplier with such information and Client Materials as the Supplier may reasonably require in order to supply the Services, and to ensure that such information is accurate in all material respects;
  - 5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
  - 5.1.6 ensure that any Client Materials provided from time to time do not infringe any Applicable Laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party IP Rights) ("**Inappropriate Content**");
  - 5.1.7 indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content; and
  - 5.1.8 keep and maintain all equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Client's premises in safe custody at its own risk, maintaining the Supplier Materials in good condition until returned to the Supplier, not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation, and not to cause any attachments (other than those approved in advance by the Supplier) to be connected to the Supplier Materials.
- 5.2 The Client shall not alter any Deliverables without the express consent of the Supplier. For the avoidance of doubt any unauthorised alterations to the Deliverables shall be considered additional Services under the Agreement and the Supplier shall be entitled to invoice the Client accordingly.

## 6 CHANGE CONTROL

- 6.1 If the Client wishes to change the scope or execution of the Services, it shall submit details of the requested change to the Supplier in writing ("**Change Request**").
- 6.2 After receiving the Change Request the Supplier shall provide a written estimate to the Client setting out details of the impact which the proposed change will have on:
- 6.2.1 the Services;
  - 6.2.2 the Fees;
  - 6.2.3 the timetable of the Services; and
  - 6.2.4 any terms of the Agreement.
- 6.3 Unless both parties consent to the Change Request, there shall be no change to the Services, or the Agreement.
- 6.4 If the Supplier consents to the Change Request, it shall issue a revised Order detailing the Services to be provided and the Fees payable following the Change Request which shall be subject to these Terms.
- 6.5 For the avoidance of doubt, the Supplier may charge for the time it spends on dealing with Change Requests.

## 7 FEES

- 7.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the Fees.
- 7.2 The price of the Services is exclusive of all expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, hosting costs and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any equipment or materials, which the Supplier shall be entitled to charge the Client for.
- 7.3 The Supplier shall invoice the Client on completion of the Services.
- 7.4 The Client shall pay each invoice submitted by the Supplier within 14 days of the date of the invoice into a bank account nominated in writing by the Supplier.
- 7.5 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Client, the Client shall, on

receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 7.6 If the Client fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 5% per annum above the Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 7.7 The Client shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## 8 IP RIGHTS

- 8.1 Subject to clauses 8.3, 8.4, and 8.5, all IP Rights in the Deliverables created by the Supplier shall vest in the Client.
- 8.2 The Client grants to the Supplier a non-exclusive, royalty-free licence to use any of the Client's IP Rights required to deliver the Services (such as the Client's corporate logos or branding) for the purpose of delivery of the Services.
- 8.3 The Client acknowledges that the Supplier may make use of third party Intellectual Property Rights to create the Deliverables (such as photographers or stock image providers). The Supplier shall ensure that the Client is granted a licence from that third party enabling the Client to use the Deliverables for their intended purpose.
- 8.4 The Supplier retains ownership of all Intellectual Property Rights in any materials which were owned by the Supplier which are (a) in existence prior to entering into the Agreement; or (b) is developed by the Supplier out with the scope of the Agreement ("**Supplier IP Rights**"). Insofar as any Supplier IP Rights are necessary for the purpose of delivery of the Services, the Supplier grants to the Client a non-exclusive, royalty-free licence to use such Supplier IP Rights.
- 8.5 In the case where the Client seeks a variety of proposals to provide the Services or any related services, the Supplier may provide the Client with a range of concepts and options to fulfil the Client's needs ("**Concepts**"). The Client shall have no right of ownership in any of the Concepts until the Client, in writing, approves one of the Concepts ("**Approved Concept**"). The Supplier shall be free to make any use of any of the Concepts except the Approved Concept with other third parties or clients or by the Supplier internally, except to the extent that the said Concepts include Intellectual Property Rights granted by the Client under clause 8.2.
- 8.6 The Client shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Client Materials infringe the IP Rights of a third party.
- 8.7 The Supplier shall be entitled to reproduce, publish and display any Deliverables on its websites and in any of its publications or portfolios.

## 9 CONFIDENTIALITY

- 9.1 The parties each undertake to keep confidential and not to disclose to any third party, or to use themselves other than for the purposes of this Agreement or as permitted under or in accordance with this Agreement, any confidential or secret information in any form directly or indirectly belonging or relating to the other, its affiliates, its or their business or affairs, disclosed by the one and received by the other pursuant to or in the course of this Agreement ("**Confidential Information**").
- 9.2 Each party undertakes to only disclose the Confidential Information of the other:
- 9.2.1 to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement or as agreed specifically in writing by the parties; or
- 9.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

## 10 DATA PROTECTION

- 10.1 The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Client:
- 10.1.1 it shall act only on instructions from Client; and
- 10.1.2 it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## 11 LIABILITY

- 11.1 Nothing in these Terms shall limit or exclude the Supplier's for:
- 11.1.1 death or personal injury resulting from its negligence, or the negligence of its employees, agents or subcontractors;

- 11.1.2 fraud or fraudulent misrepresentation, or
- 11.1.3 any other liability which cannot be excluded by law.
- 11.2 Subject to clause 11.1:
  - 11.2.1 the Supplier shall not be liable to the Client, whether in contract, delict, tort (including negligence), breach of statutory duty, or otherwise, arising for any loss of profits, loss of anticipated savings, damage to software, loss and/or corruption of data, incompatibility of a Site with any browser or devices, or any indirect or consequential loss arising under or in connection with the Agreement; and
  - 11.2.2 the Supplier's total aggregate liability arising in respect of all losses arising under or in connection with the Agreement, whether in contract, delict, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the value of the Fees paid under the Agreement.
- 11.3 For the avoidance of doubt, the Supplier shall under no circumstances be liable to the Client for any alternative supplier's charges, irrespective of whether the Client has appointed the alternative supplier due to any defects with the Services or for any other reason.
- 11.4 This clause 0 shall survive termination of the Agreement.

## 12 SUSPENSION OF SERVICES

- 12.1 In the event of any act or omission by the Client or failure by the Client to perform any of its obligations under the Agreement ("**Client Default**"):
  - 12.1.1 The Supplier shall without limiting its other rights or remedies have the right to suspend the supply of Services under the Agreement or any other agreement between the Client and the Supplier until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
  - 12.1.2 The Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client's failure or delay to perform any of its obligations as set out in clause 5;
  - 12.1.3 The Client shall reimburse the Supplier on written demand for any costs, losses, claims, fines or damages sustained or incurred by the Supplier arising directly or indirectly from the Client Default or any suspension of the Services arising from the Client Default.
- 12.2 For the avoidance of doubt, the Supplier's decision to suspend the supply of Services under this clause 12 shall not prevent the Supplier from terminating the Agreement in accordance with clause 13.

## 13 TERMINATION

- 13.1 Either party shall be entitled to terminate this Agreement at any time, by notice in writing to the other if:
  - 13.1.1 the other party is in material breach of this Agreement and the breach is irremediable or, if remediable, is not remedied within 10 Business Days after being requested to do so; or
  - 13.1.2 the other party ceases to do business, becomes unable to pay its debts as they fall due, becomes or is deemed insolvent, has a receiver, liquidator, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business (or is the subject of a filing with any court for the appointment of any such officer), makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction), or any equivalent or similar action or proceeding is taken or suffered in any jurisdiction and the same is not dismissed or discharged within 20 Business Days.
- 13.2 Without limiting its other rights or remedies, either party may terminate the Agreement by giving the other party one months' written notice.
- 13.3 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Agreement on the due date for payment.
- 13.4 On termination of this Agreement and subject to any express provisions set out elsewhere in this Agreement:
  - 13.4.1 any equipment, Client Materials, Supplier Materials, Confidential Information or related documents shall be returned to the respective parties immediately;
  - 13.4.2 the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
  - 13.4.3 in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

- 13.4.4 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- 13.4.5 clauses which expressly or by implication survive termination shall continue in full force and effect.

## 14 GENERAL

### 14.1 Force Majeure

The Supplier shall not be liable for any delay in performing, or for failure to perform, its obligations under this Agreement if the delay or failure results from any cause or circumstance beyond its reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service 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 subcontractors.

### 14.2 Assignment

- 14.2.1 The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.
- 14.2.2 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

### 14.3 Notices

- 14.3.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- 14.3.2 A notice or other communication shall be deemed to have been received:
- (a) if delivered personally, when left at the address referred to in clause 14.3.1;
  - (b) if sent by prepaid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting;
  - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
  - (d) if sent by fax or e-mail, one Business Day after transmission.

### 14.4 Severance

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

### 14.5 Waiver

A waiver of any right under this Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy.

### 14.6 Third Party Rights

A person who is not a party to this Agreement shall not have any rights to enforce its terms.

### 14.7 Variation

Except as set out in this Agreement, no variation, additions or modifications of this Agreement shall be effective unless it is agreed in writing and signed by the Supplier.

### 14.8 Governing Law

This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish Courts.