

1. Interpretation

- 1.1. Unless the context otherwise admits words used in these Terms importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.
- 1.2. Where the context requires references to a person in these Terms shall include bodies corporate, unincorporated associations and partnerships.
- 1.3. Reference to any statutory provisions in these Terms shall include any statutory provisions, which amends or replaces it.

2. Outline of Agreement

- 2.1. These Terms and Conditions are agreed between the Parties for the provision of services by LightMedia Communications to the Client relating to any of the following:
 - 2.1.1. the development or construction of a website, extranet, intranet or sub-elements of a site utilising any form of template or semi-customised functionality ("a Project");
 - 2.1.2. the development of software, a website, e-learning application, extranet, intranet or sub-element of a site with functionality and features bespoke to Client requirements ("a Software Solution");
 - 2.1.3. the provision of consultancy and /or marketing services relating to websites, extranets or intranets ("Consultancy Services"); and
 - 2.1.4. other e-commerce or similar related services including without limitation, blended learning and database applications ("Other Services")

which shall be collectively and severally known as "Website Services".

- 2.2. The Parties have agreed the detailed specifications for the Website Services as set out or more particularly described in the Schedule to this Agreement ("the Agreed Specification") or in accordance with the Service Description

- 2.3. These Terms, the Agreed Specification and the Order Form shall be incorporated into this Agreement.

3. The Agreed Specification or Service Description

- 3.1. Any amendments proposed to the Agreed Specification or Service Description must be made in writing and delivered to the other party. Either party is entitled to request a meeting to discuss such amendments.
- 3.2. If such proposed amendments incur additional expense LightMedia Communications is entitled to require further payment to cover such expense.

4. Payment

- 4.1. The Client will pay the Fees as set out on the Order Form and in accordance with the provisions of this Agreement. LightMedia Communications will invoice the Client and the Client will pay the invoice, including Value Added Tax, (VAT) at the prevailing rate according to the terms of payment detailed on the invoice.
- 4.2. LightMedia Communications may require payment on the completion of development milestones where the Website Services involve considerable development time to implement. Such development milestones and the amount of payment for the completion of each milestone to be included within the Agreed Specification, or if not specified in the Agreed Specification as may be separately agreed in writing by the parties prior to the commencement of the Project.
- 4.3. Certain Website Services provided to the Client may be subject to periodic payments by the Client for a minimum contract period. The Client acknowledges that such minimum contract periods are reasonable due to the nature of the services to which this applies.

5. Expenses

- 5.1. LightMedia Communications reserves the right to charge the Client for expenses incurred by LightMedia Communications in the provision of the Website Services, including but not limited to travel to the offices of the Client where required, the purchase of computer consumables required for the Project and such other reasonable expenses directly related to the Project.
- 5.2. LightMedia Communications will inform the Client in writing in advance if any expenses over £25 are to be incurred during the Project.

6. Client Undertakings and Warranties

- 6.1. The Client undertakes to provide LightMedia Communications with all information and assistance reasonably required for LightMedia Communications to provide the Website Services including website, extranet or intranet content and materials as set out in the Agreed Specification in the format to be agreed with LightMedia Communications.
- 6.2. The Client warrants that he is either the owner of all copyright and any other proprietary rights in any website, extranet or intranet content or materials provided to LightMedia Communications or undertakes to ensure that he has the benefit of an appropriate licence, clearance or consents where required for such content and materials to be incorporated into the Website Services by LightMedia Communications.
- 6.3. The Client confirms that to the best of its knowledge and belief that the content and materials supplied by the Client to LightMedia Communications for the provision of the Website Services are not blasphemous, defamatory or obscene and do not breach any applicable law or regulation.
- 6.4. The Client undertakes that whilst LightMedia Communications is providing the Website Services he will comply with all relevant statutes, byelaws and other legal requirements and shall obtain and maintain any required registrations or certifications for the proper operation of his website.

7. Termination for a cause

- 7.1. This Agreement may be terminated on written notice to the other in the event that:
 - 7.1.1. either party commits a serious, grave or material breach or persistent breaches of this Agreement including non-performance, default or neglect of its duties, responsibilities and

obligations under this Agreement and such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and the remedy required;

- 7.1.2. either party is unable to pay or has no reasonable prospects of paying their debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986;

- 7.1.3. either being a company becomes subject to an administration order or goes into liquidation, (other than for the purpose of amalgamation or reconstruction), or has a receiver appointed to administer any of its property or assets, or ceases or threatens to cease to carry on business, or makes any voluntary agreement or enters into a compromise for the benefit of its creditors;
- 7.1.4. in LightMedia Communication's sole opinion, the Client is using the Website Services in a way likely to damage or bring LightMedia Communications into disrepute and the Client does not immediately cease such use upon LightMedia Communications giving written notice to this effect.

- 7.2. On the termination of this agreement in accordance with the terms of this Agreement the Client shall only be entitled to retain the benefit of any Website Services already paid for and shall return to LightMedia Communications any test examples or materials not already paid for and the Client shall not retain any copies of the returned website materials or parts thereof.
- 7.3. Any termination of this Agreement shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of this Agreement which are by their construction intended to survive such termination.

8. Cancellation

- 8.1. Should the Client cancel any Website Service after the Order Form has been signed by the Client, then:
 - 8.1.1. where the Website Services are not subject to any minimum contract period, LightMedia Communications shall be permitted to retain any payments made by the Client prior to cancellation and shall be entitled to recover from the Client a cancellation charge of 50% of any outstanding balance of the agreed Fee; or
 - 8.1.2. where the Website Services are subject to a minimum contract period, the Client shall pay the sum equivalent to the balance of the total fees payable for the minimum contract period before this Agreement may be treated as cancelled.

9. Intellectual Property Rights ("IPRs")

- 9.1. All IPRs, including without limitation copyright, in any content or materials provided by the Client to LightMedia Communications which are re-produced in the course of providing the Website Services shall belong, so far as the law allows, to the Client.
- 9.2. The Client grants to LightMedia Communications a non-exclusive, revocable, royalty-free licence to use and reproduce and publish as necessary, its name, logos, trademarks or devices for the purposes of providing the Website Services.
- 9.3. Subject to Term 9.1 above, all IPRs in the design, layout, non-Client supplied content or materials as well as underlying code providing website functionality in any website or component part of a website produced under this Agreement shall remain the property of LightMedia Communications, or its technical partners unless agreed otherwise.
- 9.4. On condition that the Fees provided for in this Agreement are paid by the Client and subject to Term 23.2 below, LightMedia Communications grants to the Client, a non-exclusive, royalty free licence to use those IPRs reserved in Term 9.3 above. Such licence shall not permit the Client to alter the underlying coding within the Website Services or any other coding carried out as part of the Website Services with a view to creating a separate web site or licensing the Project web site to a third party without the prior written consent of LightMedia Communications.
- 9.5. In the case of a Software Solution Project such licence provided for in Term 9.4 shall not expire in time nor be subject to any website hosting requirements.
- 9.6. In the case of any other Project, unless specifically agreed to the contrary, the licence in Term 9.4 shall be subject to LightMedia Communications hosting terms and payment by the Client of any fees associated with such hosting.
- 9.7. The Client undertakes not to materially alter or diminish the design and function of the Software Solution or Project web site without the prior written consent of LightMedia Communications.
- 9.8. Neither party shall make any claim to the other party's trademarks or register or cause to be registered or apply for a materially similar trademark or imitation of a trademark during or after the expiry of this Agreement.
- 9.9. Neither party shall register or cause to be registered any company name materially similar to that of the other party.
- 9.10. Neither party shall register or cause to be registered any domain name materially similar to that of the other party except where the Client specifically requests that LightMedia Communications register domain names similar to that of the Client's on behalf of the Client in order to prevent their registration and use by third parties. In this case all reasonable fees and expenses incurred in registration of such domain names shall be payable by the Client as part of the Fees. On payment of the Fees and in the case of a Project upon signing of the Project Release Form by the Client LightMedia Communications undertakes to transfer all registration details, include but not limited to technical and administrative details and title to the registered domain names to the Client.

10. Confidentiality

- 10.1. Both parties shall keep confidential the specific terms of this Agreement and the Website Services and not disclose them save to such employees or contractors as need to know the relevant information for the purposes of performing their duties in accordance with this Agreement. The parties agree that all information marked "Confidential", or where not marked it is reasonable to judge such information as confidential, shall not be disclosed at any time during the provision of the Website Services or for a period of 12 months

following their completion, except where such disclosure is required by law or by order of a court in the jurisdiction of England. The parties further agree that all information marked as a "Trade Secret" and reasonably judged to constitute a trade secret shall not be disclosed at any time during or after the expiry of this Agreement, except where such disclosure is required by law or by order of a court of a court of competent jurisdiction Confidential information and Trade Secrets shall consist of, but not necessarily be limited to: technical, commercial, financial, operational, marketing or promotional information or data.

11. Technical Support

- 11.1. The Client shall have the benefit of, via the systems utilised by LightMedia Communications for the provision of the Website Services the following technical support during the course of this Agreement:
- 11.1.1. 24x7 monitoring of availability and performance of the system utilised for the provision of the Website Services;
 - 11.1.2. file back-up
 - 11.1.3. appropriate hardware and bandwidth to ensure acceptable page regeneration times; and;
 - 11.1.4. a telephone help-desk service between 9.00am and 5.00pm, Monday to Friday, excluding holidays.

12. Limitation of Liability and Indemnity

- 12.1. LightMedia Communications shall not be liable to the Client under this Agreement in contract, tort, or otherwise (including negligence), pre-contract or by way of other representations (other than fraudulent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential loss whatsoever.
- 12.2. Subject to the Term 12.1, LightMedia Communication's liability to the Client under any indemnity provided in this Agreement or in damages together with any costs shall be limited to the amount actually paid by the Client in respect of the particular Service in respect of which it is claimed there is a breach by LightMedia Communications.
- 12.3. The Client agrees to indemnify LightMedia Communications against any claims, damages, losses, costs and expenses which LightMedia Communications may sustain or incur in relation to any claim by a third party that the content and materials which the Client has provided to LightMedia Communications constitutes a breach of any applicable law or regulation including without limitation such laws relating to sale of goods, obscenity, state security or defamation in any jurisdiction where such content or material may be reproduced or is an infringement of any intellectual property rights. The Client acknowledges that it is his responsibility to ensure that the website, Intranet or Extranet in connection with which the Website Services are provided does not infringe the laws of any jurisdiction within which it is actively promoted.
- 12.4. Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

13. Assignment

- 13.1. Neither party may assign or otherwise transfer this Agreement or any rights, duties and obligations hereunder without the prior consent in writing of the other party.

14. Force Majeure

- 14.1. Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil disorder or industrial dispute. If such delay or failure continues for a period of at least fourteen days, the party not subject to the force majeure shall be entitled to terminate this Agreement by notice in writing to the other.

15. Joint Venture or Partnership

- 15.1. Nothing in this Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party.

16. Non-Solicitation

- 16.1. The Client undertakes that for the duration that LightMedia Communications is providing Website Services to the Client and for a period of twelve months thereafter that he shall not directly or indirectly solicit or induce any of LightMedia Communication's employees to leave the employment of LightMedia Communications whether to work on a freelance or consultancy basis or to be directly employed by the Client.

17. Notices

- 17.1. Any notice given by either of the parties under this Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery, first-class post, or facsimile transmission to the receiving party as set out on the Order Confirmation Form
- 17.2. Any such notice shall be deemed to be effectively served as follows:
- 17.2.1. in the case of service by pre-paid recorded delivery or first-class post 48 hours after posting.
 - 17.2.2. in the case of service by email, or facsimile transmission on the next working day.

18. General

- 18.1. Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.
- 18.2. This Agreement and these Conditions shall be read and construed independently of each other. Should any part of this Agreement or these Terms or their paragraphs, sub-paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub-paragraphs and Terms.
- 18.3. No addition to or modification of any of these Terms or any other part of this Agreement shall be binding on the parties unless made by a written instrument and signed by the signatories to this Agreement or their duly authorised representatives.
- 18.4. This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreements between the parties.

19. Jurisdiction

- 19.1. This Agreement shall be interpreted, construed and enforced in accordance with English law. Any dispute arising shall be referred to a single arbitrator for determination in accordance with the Arbitration Act 1996.

Website, Intranet, Extranet Projects & Software Solutions

20. Delivery by Client of Content & Materials

- 20.1. The Client shall deliver all the content and materials required for the Software Solution or Project and in the format requested to LightMedia Communications before commencement or according to the provisions of the Agreed Specification.
- 20.2. The Client will notify LightMedia Communications in writing (as soon as possible) of any delays to that set out in the Agreed Specification in delivering content and materials required for the Software Solution or Project and provide LightMedia Communications with a revised timetable for supplying such content and materials.
- 20.3. The Client shall be responsible for retaining its own copies of the Content as provided to LightMedia Communications and for insurance against any accidental loss of the Content. LightMedia Communications shall in no circumstances be liable for any loss or damage to the Content howsoever caused.

21. Credits and Publicity

- 21.1. Unless agreed otherwise the web, intranet or Extranet site, the completed Software Solution or Project website produced for the Client will contain a link from it to either:
- 21.1.1. LightMedia Communications's homepage by way of a logo or graphic image as supplied by LightMedia Communications or alternatively by way of a text hyperlink in the form, "designed by LightMedia Communications Limited" or
- 21.2. Subject to confidentiality provisions above, each party shall be permitted to refer to their working relationship with the other party for press and publicity purposes after receiving the written approval of that other party regarding the content of any such material.

22. Delivery

- 22.1. LightMedia Communications may deliver the files containing the Software Solution or Project website, Intranet or Extranet to the Client by way of Digital Versatile Disc, (DVD) or such other data storage method as selected by LightMedia Communications. Alternatively, LightMedia Communications may arrange for temporary hosting of the Software Solution or Project website and facilitate delivery by way of a transfer protocol.
- 22.2. If the Agreed Specification includes hosting of the website or where the client has requested LightMedia Communications arrange hosting for the web site, on completion of the project LightMedia Communications will arrange for the site to be published and hosted on the fileservers operated on behalf of RackSpace or an alternative ISP. Such hosting shall be provided in accordance with their Hosting Terms.

23. Project and Software Solution Milestone and Release

- 23.1. On attaining a milestone as provided for in the Agreed Specification or upon delivery of the completed Project or Software Solution the Client will complete, sign, date and return to LightMedia Communications LightMedia Communications's standard Project Release form. This shall indicate the Client's acceptance that the milestone has been achieved or, in the case of a final release that the Project or Software Solution, the functionality and design elements are in accordance with the Agreed specification. The Client shall not unreasonably withhold his signature on the Project Release form where the Agreed Specification has been complied with.
- 23.2. The licence granted in Term 9.4 by LightMedia Communications to the Client for use of the completed web, Intranet or Extranet site is only granted once the Project Release form has been correctly completed and returned to LightMedia Communications.
- 23.3. The Client may only use or publish the completed Project or Software Solution once full payment of the Fees set out on the Order Form has been made to LightMedia Communications and the correctly completed Project Release form has been returned to LightMedia Communications.
- 23.4. The final Project Release form will release LightMedia Communications from undertaking any further work, save in respect of any limited warranty, under this Agreement unless the Order Form stipulates that further Website Services are to be provided. Such further Website Services shall be supplied in accordance with these Terms.

24. General Limited Warranty

- 24.1. LightMedia Communications warrants to the Client that upon delivery the website Project will achieve the level of functionality described in the Agreed Specification. LightMedia Communications gives no warranty that the Client's use of the delivered website will be uninterrupted or that its operation will be error free after delivery.

25. Software Solution Further Warranty

- 25.1. LightMedia Communications warrants to the Client that in the case only of a Software Solution that any errors relating to proper operation or functionality as described in the Agreed Specification are discovered within 30 days after delivery it will be rectified.

Consultancy Services

26. Third Party Services

- 26.1. Notwithstanding anything set out in the Agreed Specification regarding the services of any third party such as search engine and web directory providers, LightMedia Communications gives no warranty that such third parties will accept a listing of the Client's website or in relation to the performance or operation of such third party's services.
- 26.2. LightMedia Communications reserves the right to utilise other third party services in addition to or in substitution of those set out in the Agreed Specification. Where the use of other such alternative services would be of a significant effect to the Consultancy Services being provided to the Client, LightMedia Communications shall advise the Client in writing before such alternative services are utilised.