

## OSX Ltd :: Website Creators

### WEB PROJECT TERMS AND CONDITIONS

This document ("Terms and Conditions") sets out the terms and conditions on which **OSX Limited** whose principal place of business is at **Unit 15 Pioneer Road, Faringdon Oxfordshire SN7 7BU** (referred to below as "Us", "We", "Our"), is prepared to provide web development services to the client named in Our corresponding proposal (referred to as "You", "Your") (where You and We together are referred to as "Both of Us").

#### 1 Definitions.

The following terms have the meanings set forth below whenever they are used in these Terms and Conditions:

"**Content**" means text and images provided by You for inclusion in the Web Site, including any branding material and logos.

"**Delivery Date**" means the estimated date on which We shall first make available the Web Site.

"**Hosting**" means the hosting of the Web Site and the Content, with a maximum of 500Mb of storage, and unlimited email addresses on a secure server offering 24x7x365 availability.

"**Hosting Fee**" means the price for provision of the Hosting for a period of 12 months or as otherwise set out in the Proposal.

"**Problem**" means the failure of the Web Site to perform in accordance with a reasonable interpretation of the Proposal.

"**Project Price**" means the price for the Web Project, as set out in the Proposal

"**Proposal**" means Our proposal to You setting out Our high-level vision of the design and functionality of the Web Site, the timescales in which We expect to be able to develop the Web Site and the Project Price.

"**Signoff**" means the acceptance of the Web Site by You (and "Signed Off" shall be construed accordingly).

"**Start Date**" means the start date for the work, which shall be the date of receipt of an Order as determined in accordance with clause 2.2, below unless otherwise agreed by Both of Us.

"**Support**" means the provision of support services in connection with the Web Site that might include uploading and management of Content and other services as set out in the Proposal or subsequently agreed by Both of Us in writing.

"**Test Period**" means the time during which You may test the Web Site for the purpose of determining whether it shall be Signed Off, as defined in the Proposal.

"**Web Project**" means the development and supply of the Web Site as set out in the Proposal.

"**Web Site**" means the new web site developed by Us under these Terms and Conditions in accordance with the Proposal and incorporating the Content.

#### 2 Supply of Web Project

2.1 For the purposes of these Terms and Conditions, communications made using electronic mail shall be considered to be in writing.

2.2 When We receive a written confirmation from You notifying Us that You would like to proceed with the Web Project (an "Order") this shall, together with the Proposal and these Terms and Conditions, form a binding contract for the purchase by You and supply by Us of the Web Project (the "Contract"). In the event of any conflict, these documents shall apply in the following order of precedence (most important first): (a) Our Proposal, (b) these Terms and Conditions and (c) Your Order

2.3 You agree that any terms and conditions in Your Order shall be of no effect unless explicitly agreed otherwise by Us in writing.

2.4 We agree to perform the Web Project as set out in the Proposal and Proposal and, while We shall make reasonable endeavours to maintain the Delivery Date quoted, time shall not be of the essence.

2.5 If You require additions or amendments to the Web Site and the Content We shall supply You with a new or amended Proposal for the work, including the price and approximate timescales for delivery. On receipt of Your written agreement to such Proposal the Contract shall be considered to be amended accordingly.

#### 3 Web Site Usage and Resale

3.1 Upon payment of the Project Price in full You are granted a perpetual, world-wide, royalty free licence to use the Web Site in connection with the domain name set out in the Proposal (the "Domain") only.

3.2 You agree that You will not sell, assign, license, lease, rent, loan or lend copies the Web Site or any of the source code, HTML, Flash code or other components of the Web Site in any manner to third parties. You may sell the Web Site project as a whole to a third party provided that no copies are made of the Web Site or any of the source code, HTML, Flash code or other components of the Web Site in any manner prior to sale and it is understood that you are selling the single instance of the website as purchased from OSX Ltd.

3.3 If the Proposal includes the provision of Hosting, We shall:

a) provide Hosting for a period of twelve (12) months from the date of receipt of the Hosting Fee;

and

b) perform uploads of, and amendments to, the Content as requested by You and subject to any fees that We may agree with You from time to time;

c) act in the capacity of a Data Processor under the terms of the Data Protection Act 1998 (the "Act"). This means that We must use all commercially reasonable security measures, both physical and electronic, to prevent any unauthorised access to Your data, and that We may only process it according to Your instructions; and

d) advise You of Your need to renew this agreement for Hosting prior to its expiry and shall, provided We receive the subsequent year's Hosting Fee in time, ensure continuity of provision of Hosting.

#### **4 Your Co-operation.**

4.1 You shall provide co-operation and support to Us in Our efforts to develop the Web Site. Such cooperation and support shall include, but not be limited to:

- (a) the provision of the Content and any other relevant information in accordance with the timescales set out in the Proposal; and
- (b) the prompt review and analysis of the work performed by Us including testing and review of the completed Web Site within the Test Period.

4.2 The Test Period will commence when We notify You in writing that the Web Site has been completed. You shall examine and test the Web Site during the Test Period and the Web Site shall be deemed Signed Off unless You notify Us in writing during this Test Period of any Problems that will prevent Signoff. If we receive such notification, We will extend the Test Period appropriately to enable Us to resolve such Problems.

4.3 You agree that if We are unable to perform Our obligations under these Terms and Conditions due to Your failure to meet Your agreed obligations then We shall not be considered in default under these Terms and Conditions as a result.

4.4 You are considered to be a Data Controller under the Act and You agree that You must comply with the requirements of the Act with regard to Your use and processing of personal data Hosted by Us.

4.5 You agree that You will be solely responsible for Your compliance with the requirements of the CANSPAM Act 2003 and the Directive on Privacy in the Electronic Communications Sector (2002/58/EC) in Your use of the Data and that You will indemnify and hold Us harmless for any breach by You of these requirements.

#### **5 Fees & Payment.**

5.1 We will invoice You 50% of the Project Price on receipt of Your Order, and the remaining 50% on Signoff. All fees are non refundable unless OSX are unable to deliver your project to the specification in our proposal document. We will invoice You the Hosting Fee, if You have requested Hosting, on receipt of Your Order. You shall pay each invoice within Fourteen (14) days of the date thereon.

5.2 If payment of the Project Price or any part thereof is overdue then We may at Our option:

- (a) suspend all work in progress in respect of development of the Web Site until such payment is made;

or

- (b) treat such as a material breach and terminate these Terms and Conditions in accordance with Clause 8.2 (a).

5.3 If payment of the Hosting Fee is overdue then We may suspend provision of the Hosting until such payment is received in full.

#### **6 Warranties.**

6.1 Subject to the exceptions set out below and the limitations upon Our liability in Clause 7, We warrant that for a period of six months from Signoff the Web Site will comply with the Proposal. In the event of any Problem arising during this period, We shall fix the Problem as soon as reasonably possible. If We are unable to fix a Problem in a reasonable time frame, You may return the Web Site and delete all copies of it from Your computer systems and We shall refund the Project Price, in which case the Contract will terminate. You agree that You must report any Problem to Us immediately upon becoming aware of it in order to benefit from the remedy set out in this Clause 6.1.

6.2 The warranty set out in Clause 6.1 does not apply to conditions resulting from improper use, or external causes, including modifications not performed by Us or from third party hosting.

6.3 Save as expressly provided in Clause 6.1 of these Terms and Conditions, We specifically exclude but without limitation all other conditions, warranties, representations or other terms relating to these Terms and Conditions hereto including any conditions, warranties, representations or other terms that might otherwise be implied or incorporated into these Terms and Conditions, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.

#### **7 Limitation of Liability.**

7.1 Nothing in these Terms and Conditions shall exclude or limit Our liability for personal injury or death caused by Our negligence or for any other liability that cannot be excluded by law.

7.2 Subject to Clause 7.1, in no event will We be liable under these Terms and Conditions for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, and/or (iv) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.

7.3 Except as provided in Clause 7.1 and in Clause 7.2 Our maximum aggregate liability to You for any cause whatsoever shall be for direct costs and damages only and will be limited to a sum equivalent to 125% of the aggregate of the Project Price and/or the Hosting Fee paid and payable by You in respect of the Web Site that is the subject of Your claim.

7.4 We hereby exclude all liability that We have not expressly accepted in these Terms and Conditions. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 7 "We" includes Our employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause in terms of the Contracts (Rights of Third Parties) Act 1999.

#### **8 Duration & Termination.**

8.1 Subject to termination in accordance with Clause 6.1 or Clause 8.2 each Contract shall become effective on the Start Date and shall continue until Signoff.

8.2 Either party ("the Initiating Party") may forthwith terminate any Contract at any time: (a) on giving written notice to the other party if the other party commits any material breach of any term of these Terms and Conditions and fails to remedy that breach within thirty (30) days of a written request to do so; or (b) if the other party shall become insolvent or bankrupt.

8.3 The expiry of any Contract or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

#### **9 Intellectual Property.**

9.1 Subject to the provisions of Clause 9.2 We are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Web Site. Title to the Web Site shall remain vested in Us or Our licensors.

9.2 You warrant that You are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Content. Title to the Content shall remain vested in You or Your licensors.

9.3 You hereby agree to indemnify Us against any and all loss or damage arising from the breach of any third party intellectual property right or any applicable law resulting from the possession or use of the Content in accordance with these Terms and Conditions.

9.4 Subject to Clause 9.3, in the event of any claim that the Web Site breaches any third party intellectual property right, We shall either modify the Web Site so that it no longer breaches such third party right, or secure for You the right to use the Web Site unmodified, at no cost to You.

9.5 In the event that We become aware that the Web Site is being used for any unlawful purpose and/or that the Content is identified as containing material of an offensive or unlawful nature We reserve the right to remove access to the Web Site and to delete all such offending or unlawful material without prior notice or reference to You. The corresponding Contract shall then immediately terminate in accordance with the provisions of Clause 8.2(a).

#### **10 Compatibility.**

OSX Ltd will endeavor to ensure that any developed/designed site or application will function correctly on the server it is initially installed on and that it will function correctly when viewed with the latest version of all major browsers at the time of delivery. OSX Ltd can offer no guarantees of correct function with all browser software.

#### **11 Confidentiality.**

11.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Our or Your business affairs or activities, Clients and Client Accounts and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.

11.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under these Terms and Conditions.

11.3 The provisions of Clause 10.2 shall not apply to (a) any information in the public domain otherwise than by breach of these Terms and Conditions; (b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party; (c) information lawfully obtained without restriction from a third party; and (d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority.

11.4 We may publicise Our involvement with You with Your prior written consent such consent not to be unreasonably withheld or delayed.

11.5 If any Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

#### **12 Assignment.**

You may not assign any Contract or otherwise transfer any rights or obligations under a Contract except with Our prior written consent.

#### **13 Force Majeure.**

Neither party is responsible for failure to fulfill its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under these Terms and Conditions shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

#### **14 Notices.**

All notices made pursuant to these Terms and Conditions must be made in writing.

#### **15 Entire Agreement.**

These Terms and Conditions, the Proposal and the Order constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written.

#### **16 Dispute Resolution, Law & Jurisdiction.**

16.1 In the event of any dispute arising under these Terms and Conditions that You and We are not able to resolve between ourselves, Both of Us will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. The mediator will be appointed by CEDR.

16.2 Subject to the provisions of Clause 15.1 Both of Us agree that the courts of England shall have exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to any Contract and that the laws of England shall govern these Terms and Conditions.

**17 General.**

If any provision of these Terms and Conditions is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions shall not be affected thereby, and shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under these Terms and Conditions. These Terms and Conditions may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Us and You.