

## **Terms & Conditions**

### **1) THIS AGREEMENT**

- a. These terms and conditions together with the Customer Agreement and the Privacy Policy expressly referred to in this Agreement contain the entire Agreement between JayKay Designs Ltd ('us / we') and the Customer ('you'). It supersedes any previous Agreements or arrangements, undertakings or proposals, written or oral. No change to it can apply unless it is in writing and is signed by one of our Directors and someone authorised by you. We reserve the right to decline any order in our sole discretion.
- b. The minimum term in respect of the provision of the Services (the "Initial Term") shall, unless otherwise stated in the 'Duration and Costs' section of the Customer Agreement, be 1 month. After the Initial Term this Agreement shall, unless terminated in accordance with clause 11 be renewed on a month to month basis.
- c. You represent and warrant to us that you will use the Services only in the ordinary course of your business and not as a consumer.
- d. If we do not, at any time, enforce any of our rights under this Agreement, we do not give up any of those rights.
- e. If you are a partnership of two or more persons, you will be liable for payments individually and together.
- f. If any provision of this Agreement is held by a court of competent authority to be unenforceable or illegal, the remaining provisions shall remain in full force and effect.

### **2) PAYMENTS**

- a. The payments that you must make under this Agreement are set out in the Customer Agreement.
- b. Your Initial Payment is not refundable in all circumstances, including termination by you or us of this Agreement for whatever reason, howsoever arising.
- c. Any Initial Payment is due with the placing of your order with us and the next Monthly Payment is due approx 1 month from that date.
- d. It is a vital condition of this Agreement that each and every payment is made in full, on time and in Pounds Sterling or Euros, as previously agreed. You must continue to make the payments even if there is any interruption or any other difficulty with the Services.
- e. If payments are not made on time, we have the right to suspend, withdraw or terminate the Service without any prior notice to you.
- f. You will be responsible for any costs incurred by us in recovering monies you owe us which are overdue and we reserve the right to charge you interest at the rate of 1% per month, calculated daily, based upon all such overdue amounts until the time of payment.
- g. The right of set-off is strictly excluded.

### **3) CUSTOMER SUPPORT**

We will provide you with support relating to e-mail, websites and any other services provided by us by telephone or by e-mail.

#### **4) SERVICES**

- a. You acknowledge that you are fully responsible for the use that you make of the Services, and the results that you obtain from that use.
- b. We will use all reasonable endeavours to ensure that your website is available as quickly as possible, but we do not guarantee its availability within any particular time period.
- c. You must provide us with such information as we may require enabling us to complete you. If you fail to provide it within a reasonable period, you must still make the payments due under this Agreement.
- d. If we have developed a Website for you as part of the Services, you must check that it meets your original specification. If it does not, you must inform us, by first class post, e-mail or phone. If you do not bring alterations to our attention, then you will be deemed to have accepted the Website as presented.
- e. Any text or graphic amendments to the Website must be acceptable to us. If any text or graphic amendments made by you are not acceptable to us, or if any person appears to have reasonable grounds for complaint (whether in respect of those amendments, any Content (as defined at clause 8b.) or otherwise) we may, in addition to choosing whether to exercise our other rights under this Agreement, edit the content of the Website or add a disclaimer to it.
- f. All intellectual property rights we, or our licensors, hold in any software; documentation, graphics, logos, photographs, design (including the selection and arrangement thereof) and other similar material we provide to you in connection with the Services will remain our property or that of our licensors. Permission is granted to print off hard copy portions of the website, but any other use without our prior written consent is strictly prohibited.
- g. From time to time, we may alter the form of all or part of the Services. We will use all reasonable endeavours to ensure that the overall quality and quantity of the Services remain essentially of the same nature.
- h. We reserve the right to interrupt the Services for the purpose of repair, upgrade or maintenance or to vary the technical specification of the Services for operational reasons.
- i. If we agree to transfer the hosting and maintenance of your Website to another service provider, for any reason, you acknowledge that the same level of functionality may not be achieved post-transfer.

#### **5) DOMAIN NAMES**

- a. We may refuse to register and / or to provide other Services in respect of any domain name that we consider to infringe any third party's intellectual property rights, rights of privacy, publicity or any other rights whatsoever, or to be obscene, libellous, defamatory or in any other way unlawful.
- b. We will use all reasonable endeavours to ensure that any acceptable domain name you request is successfully registered, but we do not warrant that any application will be successful. If we are unable to register any domain name you request, we will ask you

for an alternative.

c. You must inform us, by e-mail or phone, within 24 hours of your becoming aware that any error has been made in the form or registration of a domain name.

d. Domain name renewal fees may be payable by you in the Initial Term and / or in any Renewed Term. If you do not pay renewal fees when we request payment from you, your domain name will not be renewed and we will no longer be able to provide the Services to you. This will constitute a material breach of the Agreement on your part, entitling us to bring the Agreement to an end.

e. If this Agreement comes to an end, for any reason, our obligation to provide the Services will come to an end. We will not be responsible for the renewal of any domain name registered on your behalf after that time. We will not release any domain name we have registered for you until we have received payment in full for all of the Services (that is, a sum equal to the termination payment details of which are set out at 12 (i) below), together with an administration fee.

f. We may suspend, cancel or transfer a domain name registration if we receive notice of a court order or arbitration award requiring such suspension, cancellation or transfer.

## **6) THIRD PARTY SERVICES**

a. You understand and agree that where a service is identified in the Customer Agreement as a 'Third Party Service', or where you have been informed or where it is evident that any part of the Services are provided to you by a third party, (together, 'Third Party Services'), you must comply with the relevant third party's authorisation procedure, conditions of use and terms of business.

b. You acknowledge that we do not warrant or represent any quality, term, condition or warranty as to the format, functionality or features of:-

(i) any Third Party Services; or

(ii) any other services provided by third parties that are included in any promotional material provided by us.

This being the case, we cannot be held responsible for the actions or omissions of any third party provider of services to you and you must ensure that you obtain any assurances you require directly from them.

## **7) WARRANTIES**

a. The express terms of this Agreement are in lieu of all other warranties, terms and conditions, express or implied, which are excluded to the fullest extent permitted by law. Without prejudice to the generality of the foregoing, we

disclaim all responsibility for any information, material, software, advice, material or goods and services obtained from the Internet and any acts or omissions of providers of third party services, (as described at clause 6 above).

b. You warrant to us that you were not induced to enter into this Agreement due to any misrepresentation (excluding fraudulent) by us, our officers, employees or agents.

## **8) FURTHER OBLIGATIONS**

You:

- a. will give us any assistance we require in providing the Services to you;
- b. warrant and undertake to us that you have all necessary legal rights in all information, design, data, graphics, you use or provide to us to use for inclusion on the Website (the 'Content') and that the Content and your domain name(s) do not infringe any third party's intellectual property rights, rights of privacy, publicity or any other rights whatsoever and is not obscene, libellous, defamatory or in any other way unlawful;
- c. will be responsible for the accuracy and completeness of the Content and for ensuring that it is useable by us in the construction of your Website;
- d. acknowledge that if we are unable to complete your Website as a result of your failure to comply with the provisions set out above concerning Content, Monthly Payments will remain due from you;
- e. will notify us by e-mail or phone of any defects in the Service within 24 hrs of your becoming aware of it;
- f. are responsible for the security and proper use of any passwords and / or identifiers which are issued to you and must take all reasonable steps to keep the same confidential and not to disclose it to unauthorised people; you must inform us by e-mail or telephone within 24 hours of your having reason to believe that a breach of your security, passwords and / or identifiers has or may have occurred;
- g. will keep back-ups of your material (including e-mails) and of all your data and you will be responsible for the restoration of any material or data which is lost, spoiled, or inaccessible;
- h. will be responsible for complying with all relevant legal and statutory requirements relevant to using and / or trading over the Website and understand that your use of the Internet is at your own risk;
- i. will provide us with your up-to-date contact and banking details, from time to time;
- j. will not transfer or assign this Agreement to someone else without our written consent.

## **9) INDEMNITY**

You agree to indemnify us, our officers, partners and agents from and against all actions, demands, costs, losses, liability, expenses and claims ('Claims') we may sustain or which may be brought against us that arise from your breach of this Agreement, your use or misuse of the Services, or as a result of your infringing (innocently or knowingly) third party rights.

## **10) DEFAULT**

We may terminate this agreement by notice in writing to you if:

- (i) you commit a material breach of this Agreement and fail to remedy it within 14 days of service of a written notice from us, specifying the breach, requiring its remedy and referring to our right to terminate this Agreement in the event of default; or,
- (ii) you have a receiver appointed over any of your assets, become insolvent or are, in our opinion, unable to pay your debts; or,

(iii) you cease to trade or your partnership is dissolved.

If we end the Agreement, the provisions of clause 12 below will apply.

## **11) ENDING THE AGREEMENT**

You may terminate the Agreement at the end of any Renewed Term by telephone or e-mail anytime during the service unless a contract of service has been agreed between both parties.

## **12) CONSEQUENCES OF ENDING THE AGREEMENT**

If this Agreement is brought to an end by us under clause 10, above, or by you under clause 11. above:-

(i) all sums to be paid to us under this Agreement will become immediately due and payable, (for the avoidance of doubt, this will include all payments that would have been paid by you to us as if the Agreement had continued for the full Initial Term and any outstanding or other sums due to us at the date this Agreement is brought to an end), and

(ii) you will cease to be entitled to use the Services.

We will not be responsible for any data that remains on our network after the date of termination.

## **13) NOTICES**

We will give notices to you by e-mail or first class post. Any notices sent by first class post will be deemed served 2 days after posting.

## **14) GOVERNING LAW**

English law governs this Agreement. Any dispute as to the provision of the Services or as to this Agreement will be subject to the jurisdiction of the English Courts.

*September 2012*