
WEBSITE DESIGN AND DEVELOPMENT TERMS & CONDITIONS

BACKGROUND:

WildSpots (the “Service Provider” encompassing “Developer”, “Designer”, “Developer” and/or “Editor”) provides Website Design, Development, Editing, Hosting, Management and general Consultancy services to business clients. The Service Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In these Terms & Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means any day other than Saturday or Sunday that is not a bank or public holiday;
“Confidential Information”	means all business, technical, financial or other information created or exchanged between the Parties in the course of the Project including the existence of the Project;
“Preliminary Payment”	means a payment by way of deposit defined in Clause 4.1;
“Project Proposal”	means a document created by the Developer which shall be based upon the Project Specification and shall give precise details of all work to be undertaken including, where appropriate, details of project phases, payment dates and completion dates;
“Project Specification”	means a document created by the Client and sent to the Developer that sets out in detail the work which the Client requires the Developer to perform;
“Quoted Price”	means the price for the Services as set out in the quotation provided by the Developer to the Client;
“Services”	means, collectively, the work to be carried out by the Developer for the Client as specified in the Project Proposal;
“Site Materials”	means all components of the Website as supplied by the Client to the Developer for the purpose of providing the Services and as created or otherwise sourced by the Developer in the course of providing the Services. This includes, but is not limited to, source code, text, graphics and animations; and
“Test Address”	means the provided development URL for the project.

1.2 The headings used in this Agreement are for convenience only and shall have no

effect upon the interpretation of this Agreement.

1.3 Words imparting the singular number shall include the plural and vice versa.

1.4 References to any gender shall include the other gender.

2. Scope of Services

2.1 Upon receipt of a Project Specification from the Client, the Developer may issue a quotation, which shall include a Project Proposal.

2.2 The Developer shall use its best and reasonable endeavours to accept all provisions in the Project Specification and shall reflect the same in the Project Proposal. Where such requirements cannot reasonably be accommodated, the Developer reserves the right to amend the Project Specification, subject to acceptance of the Project Proposal by the Client.

2.3 Where no Project Specification is provided in writing (for example an initial verbal discussion or in-person meeting), this may be confirmed back to the Client in the form of the Project Proposal. A quotation may be offered in the initial meeting or discussion and then confirmed in the Project Proposal.

2.4 Any quotation issued by the Developer shall be valid only for 14 Business Days. Upon acceptance of the quotation, the Client is deemed to have accepted the Project Proposal.

2.5 Following acceptance of the quotation and the Project Proposal, the latter shall be the sole document stipulating the scope of the Services to be carried out.

2.6 Whilst the Developer shall use its best and reasonable endeavours when compiling the Project Proposal it shall nonetheless retain the right to alter the Project Proposal once provision of the Services has commenced in situations where unforeseen requirements and / or costs arise. All alterations to the Project Proposal and to the Developer's cost requirements are subject to the approval of the Client.

3. Time

3.1 Time is not of the essence. The Developer shall provide a completion time in the Project Proposal but shall not be responsible for any project over-runs, irrespective of the cause.

3.2 The time for the provision of the Services shall be deemed to commence upon the receipt of the cleared funds, constituting the Preliminary Payment, by the Developer or as otherwise agreed in the Project Proposal.

4. Payment

4.1 The Client may be asked to make a non-refundable Preliminary Payment amounting to 25% of the Quoted Price by way of deposit prior to the commencement of provision of the Services. If requested, no work shall begin until the Preliminary Payment is received by the Developer.

4.2 The remainder of the Quoted Price shall be payable on completion OR in instalments as specified in the Project Proposal.

- 4.3 Costs incurred by the Developer through services that are supplementary or incidental to the performance of the Services that are not included in the Project Proposal shall be paid in arrears by the Client to the Developer. The Developer shall not use such services without the prior consent of the Client.
- 4.4 The Developer reserves the right to suspend provision of the Services in the event that any amounts due from the Client are not paid on time. Provision of the Services shall resume upon receipt of cleared funds amounting to all amounts due by the Developer. The Developer shall not be liable for any project delays occasioned by the Client's failure to make required payments on time.
- 4.5 The Client shall pay all required sums upon receipt of invoices for the same. In the event that invoices remain unpaid for 28 days after receipt, the amount due will be subject to interest at the rate of 8% over and above the Bank of England base rate prevailing at the time of the invoice.

5. Ownership of Site Materials

- 5.1 The Developer shall retain legal and beneficial ownership of all Site Materials created by them under this Agreement until all charges are paid in full by the Client. Upon receipt by the Developer of all sums due, legal and beneficial ownership shall be immediately assigned to the Client.
- 5.2 The Client shall retain ownership of all Site Materials owned by them prior to entering into this Agreement. No property shall be assigned to the Developer by the Client at any time.

6. Intellectual Property

- 6.1 All Site Materials provided by the Client and the copyright, design rights and trademarks therein shall remain the property of the Client. The Developer shall use such Site Materials under licence for the sole purpose of providing the Services to the Client.
- 6.2 The Client warrants that they have obtained all relevant permissions and rights for the use of any Site Material that they provide that are owned by, or were otherwise created by, a third party.
- 6.3 The Client agrees to fully indemnify and hold the Developer free from any and all claims for intellectual property infringement that may arise out of the Client's failure to obtain the required permissions and rights for the use of any Site Material provided.
- 6.4 The Developer shall bear no responsibility for ensuring that Site Materials supplied by the Client carry with them the appropriate third party permissions for reproduction.
- 6.5 The Developer shall retain ownership of the copyright subsisting in any and all Site Materials created by them under this Agreement until all charges are paid in full by the Client. Upon receipt by the Developer of all sums due, all relevant copyright shall be immediately assigned to the Client.
- 6.6 Except as expressly set out in this Clause 6, this Agreement does not transfer or grant to the Developer any right, title or interest in any intellectual property rights belonging to the Client.

7. Site Materials Delivery

- 7.1 Unless it is specified otherwise in the Project Specification, quotation or Project Proposal, all text shall be provided by the Client in electronic format and all photographs and other graphics shall either be in electronic format or of a suitable print quality for scanning. The Developer shall not be responsible for poor quality images where the poor quality is a direct result of poor quality print material from the Client.
- 7.2 The Client shall make all required Site Materials and other material available to the Developer in a timely manner. The Developer shall not be liable for any delays caused by the Client's failure to comply with this Sub-Clause.
- 7.3 The Developer shall use its best and reasonable endeavours to return to the Client all Site Materials and other material originally supplied by the Client however such return is not guaranteed and the Developer shall not be liable for any loss or damage to such material. It is the Client's responsibility to ensure that appropriate backups are made.
- 7.4 No material submitted by the Client should consist of anything which may, under the laws of England and Wales, be deemed immoral, offensive, obscene or illegal. The Developer reserves the right to reject such materials and is under a positive obligation to inform the relevant authorities of the Client's possession of such material.

8. Review and Acceptance

- 8.1 The Client shall be given the opportunity to evaluate the appearance and content of the Website at any time during the term of this Agreement through the Test Address.
- 8.2 The Client reserves the right to request changes following any review under this Clause. Such changes must be notified to the Developer in writing within a reasonable time of the review and, in any event, no later than 14 Business Days after the review. The Developer will inform the Client of any additional work, time and cost required to accommodate such changes.
- 8.3 At the completion stage, the Client shall be presented with the final version of the Website and all accompanying Site Materials. The Client shall be deemed to have accepted the work unless the Client notifies the Developer to the contrary within 14 Business Days of receipt of the Website and accompanying Site Materials.
- 8.4 Where staged approvals are requested by the Developer, should the Client fail to notify the Developer to the contrary within 14 Business Days of receipt of an approval request, the Developer reserves the right to finalise the site in its state at that point.
- 8.5 Where additional work is required due to errors made by the Developer, the Client shall bear no additional cost over and above the Quoted Price (as subsequently modified, where relevant, by any additional expenses). Where additional work is requested by the Client but such a request does not arise out of errors made by the Developer, the Parties shall agree upon a price for such additional work and shall, where appropriate, enter into a new agreement to cover that work.

9. **Post-Completion Technical Support**

- 9.1 The Developer shall not be held responsible for any problems arising with the Website save for those that result from work performed by the Developer. This shall include, but is not limited to, errors in the underlying code of the Website.
- 9.2 In the event that faults arise in the functionality of the Website that are the fault of the Developer, the Client shall inform the Developer in writing and the Developer shall use their best and reasonable endeavours to diagnose and resolve the problem within 14 Business Days. The Client will [not] be charged at the rate of £40 per hour for such remedial work.
- 9.3 In the case of all other faults, the Client shall refer to their third party web hosting service for technical assistance.

10. **Confidentiality**

- 10.1 During the term of this Agreement, the following obligations shall apply to the Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party").
- 10.2 Subject to Sub-Clause 10.3, the Receiving Party:
 - 10.2.1 may not use any Confidential Information for any purpose other than the performance of his obligations under this Agreement;
 - 10.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and
 - 10.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.
- 10.3 The obligations of confidence referred to in all provisions of this Clause 10 shall not apply to any Confidential Information that:
 - 10.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;
 - 10.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
 - 10.3.3 is required to be disclosed by any applicable law or regulation; or
 - 10.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect thereof and who imposes no obligations of confidence upon the Receiving Party.
- 10.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this Clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which he may be entitled.
- 10.5 The obligations of the parties under all provisions of this clause shall survive the expiry or the termination of this Agreement for whatever reason.

11. **Liability**

- 11.1 The Developer shall not be liable to the Client for any indirect or consequential loss the Client may suffer even if such loss is reasonably foreseeable or if the Developer has been advised of the possibility of the Client incurring it.
- 11.2 The Developer's entire liability to the Client in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement shall be limited to £50.
- 11.3 Notwithstanding any other provision in this Agreement, the Developer's liability to the Client for death or injury resulting from his own negligence or that of his employees, agents or sub-Developers shall not be limited.

12. **Warranties and Disclaimer**

- 12.1 The Developer warrants and represents to the Client that:
 - 12.1.1 all works created or procured by the Developer in the course of providing the Services will, unless otherwise stated in this Agreement, be original work and not subject to any intellectual property or other rights of any third party;
 - 12.1.2 the Client's use and operation of the Website and Site Materials as delivered by the Developer in accordance with the terms of this Agreement will not infringe the intellectual property rights of any third party; and
 - 12.1.3 all services provided to the Client by the Developer shall be provided in a timely and orderly fashion by skilled and experienced personnel acting with all due care and skill and in accordance with the best professional standards current in the website design industry.
- 12.2 Save as expressly set out in this Agreement, the Developer makes no warranty of merchantability or fitness for a particular purpose.

13. **Indemnity**

The Developer agrees to indemnify the Client against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Client or by a third party whether direct, indirect or consequential arising out of any dispute or contractual, tortious or other claims or proceedings brought by a third party alleging infringement of his intellectual property rights by the parts of the Website modified or supplied by the Developer provided that:

- 13.1 this indemnity shall not apply to any infringement of a third party's intellectual property rights arising as a direct result of any alteration or modification to the Website or any other content provided by the Developer by the Client;
- 13.2 in addition to the above indemnity, where an injunction restraining use by the Client of the Website or any other content (as delivered by the Developer) or any part of it is, in the reasonable good faith opinion of the Client's legal advisers communicated in writing to the Developer, likely to be granted by the court to the third party, the Developer shall either:
 - 13.2.1 do all acts and things necessary to render those parts of the Website or other content created or procured by the Developer, or the appropriate part of

- them, non-infringing without affecting any of the Developer's other duties and obligations under this agreement; or
- 13.2.2 obtain a licence from the third party granting the Client the right to continue using the Website or other content (as delivered by the Developer) or the part of them that infringes;
- 13.3 the Client gives written notice to the Developer of any claim or proceeding as soon as reasonably possible following receipt of it;
- 13.4 the Client makes no admission of liability and gives the Developer sole authority to defend or settle the claim or proceedings at the Developer's cost and expense; and
- 13.5 the Client gives the Developer all reasonable assistance in connection with any such claims or proceedings at the Developer's cost and expense.

14. Termination

- 14.1 This Agreement shall commence on the Commencement Date and, subject to the provisions of this Clause 14, terminate on the acceptance of the Website and the Toolkit and the receipt by the Developer of all sums due from the Client under this Agreement.
- 14.2 If the Client chooses to terminate the Agreement prior to final delivery, they agree to pay any sums due for work carried out to date immediately. Upon payment, any development files created to that point, domains or other materials will be made available to the Client.
- 14.3 A Party (the "Initiating Party") may terminate this Agreement with immediate effect by written notice to the other Party (the "Breaching Party") on or at any time after the occurrence of an event specified below in Sub-Clause 14.2.
- 14.4 The abovementioned events are:
 - 14.4.1 the Breaching Party committing a material breach of this Agreement and failing to remedy the breach within 28 Business Days starting on the day after receipt of notice from the Initiating Party giving details of the breach and requiring the Breaching Party to remedy it;
 - 14.4.2 the Breaching Party passing a resolution for winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within 7 days (other than, in each case, for the purposes of solvent amalgamation or reconstruction where the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under this Agreement);
 - 14.4.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or an encumbrancer taking possession of or selling any asset of, the Breaching Party;
 - 14.4.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.
- 14.5 An act or omission by a person who controls, is under common control with, or is controlled by a Party that would be a breach of this Agreement on his part if it were an act or omission of the Party shall be deemed to be a breach of this Agreement by

the Party.

14.6 Termination of this Agreement for whatever reason shall not affect either:

14.6.1 the accrued rights and liabilities of the Parties arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages against the other; or

14.6.2 provisions expressed to survive this Agreement, which shall remain in full force and effect.

15. **Assignment**

15.1 Subject to the provisions of the Sub-Clause below, neither Party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other. Such consent shall not be unreasonably withheld or delayed.

15.2 If the Client is a company, it shall be entitled, without the prior written consent of the Developer, to assign, transfer, sub-contract or in any manner make over the benefit or burden of this Agreement to an affiliate or to any company with which the Client may merge or to any company to which it may transfer its assets and undertaking provided that the affiliate or other company undertakes and agrees in writing to assume, observe and perform the rights and powers and/or duties and obligations of the Client under the provisions of this Agreement being assigned, transferred or otherwise made over.

16. **Force Majeure**

Neither Party to this Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to, power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

17. **Severance**

In the event that one or more of the provisions of this Agreement is found to be unlawful, invalid, or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of the Agreement. The remainder of the Agreement shall be valid and enforceable.

18. **Notice**

Unless otherwise stated in this Agreement, all notices to be served under this Agreement shall be in writing and may be served personally, or sent by registered post to the addresses detailed in the Project Proposal.

19. **Entire Agreement**

- 19.1 This Agreement embodies and sets forth the entire agreement and understanding between the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this Agreement, save for any representation made fraudulently.
- 19.2 Unless otherwise expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both of the Parties.

20. **General**

- 20.1 **Relationship Between the Parties**
The relationship between the Parties shall be that of an independent Developer and Client. This Agreement shall not create any partnership, joint venture, agency, fiduciary, or employment relationship between the Parties.
- 20.2 **No Waiver**
The Parties agree that no failure by either Party to enforce the performance of any provision in this Agreement shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Agreement. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.
- 20.3 **Non-exclusivity**
The relationship between the Parties under this Agreement is and shall remain non-exclusive. Both parties are free to enter into similar relationships with other parties.

21. **Law and Jurisdiction**

- 21.1 This Agreement shall be governed by the laws of England and Wales.
- 21.2 Any dispute relating to these Terms & Conditions fall within the jurisdiction of the courts of England and Wales.