



Terms & Conditions

A COMPANY

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TERMS AND CONDITIONS

1 Definitions and interpretation

1.1 In the Contract unless the context otherwise requires:

'Acceptance Date' means the date on which a Service is accepted (or deemed to be accepted) pursuant to clause 7;

'Confidential Information' means all business, technical, financial or other information created or exchanged between the parties in the course of the Service including the existence of the Service;

'Contract' means the contract which includes these Terms and Conditions for providing any Service;

'Content' means text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials featured, displayed or used or to be featured, displayed or used in or in relation to a Website;

'Customer' means the company, firm or person whose order for any Service is accepted by the Supplier;

'Customer Content' means Content provided to the Supplier by the Customer for provision of any Service in accordance with the Contract;

'Intellectual property rights' means any and all patents, trade marks, rights in domain names, rights in designs, copyrights and databases rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) rights in confidential information and all other intellectual property rights of a similar or corresponding character which may subsist now or in the future in any part of the world;

'Net meeting' means a real time communication between two or more people able to hear and speak to each other and to view simultaneously the same visual material (which will normally be displayed on screen and which may be a Website design, Content, newsletter template, advertisement or other Service) and to comment on that material by telephone or any other means;

'parties' means the Supplier and the Customer, but so that references to "agreed between the parties" will include an agreement between the Customer and the Web Master;

'the Price' means the sums to be paid by the Customer to the Supplier in consideration of the performance of the Services, to be as specified in the purchase order and for additional or different Services to be as agreed between the parties prior to the provision of those Services, or in default of agreement to be on the Supplier Scale;

'the Services' means such of the web site design, web site promotion, web site hosting and maintenance, news letter, ecommerce services and other services as may be provided or procured by the Supplier from time to time in accordance with a written request from the customer, and where applicable "Services"

includes any goods and software which are delivered or licensed as part of the Services;

'the Service Coordinator' means the person for the time being duly appointed by the Customer to act as the Customer's principal representative for the purpose and supervision of the Services and who shall provide all information and documentation required by the Supplier for proper performance of the Service;

'the Service Manager' means the person duly appointed by the Supplier to act as the Supplier's principal representative (which may include a Web Master), for the purpose and supervision of the Services as set out in the purchase order;

'the Specification' means the specification of a Service agreed in writing from time to time between the parties;

'Supplier' means [the Netflare Agent];

'Supplier Content' means Content of a Website provided by the Supplier as part of the provision of the Service;

'the Supplier Scale' means the standard charges of the Supplier labour from time to time;

'Term' means the period from the date of the purchase order until the Services are terminated by either of the parties in accordance with these Terms and Conditions;

'the Terms of Payment' means the terms of payment of the Price specified in the purchase order and of any other terms specified by the Supplier in accordance with the Contract;

'Web Master' means Maple Computer Consultants Limited and any other company or personnel who from time to time provide any part of the Services;

'Web Master Terms' the terms or conditions, also known as the Netflare Service Level Agreement (SLA), on which the Web Master from time to time supplies the Services;

'writing' means any method of reproducing words in legible and non-transitory form, including by electronic mail.

2 Basis for provision of Services

The Supplier shall provide or procure and the Customer shall accept and pay for the Services. The services shall be as described in the written literature provided by the Supplier, and no employee or representative of the Supplier is authorised to oblige the supplier to provide any different service. Where the Customer requires services additional to those specified in the purchase order, those additional services will become part of the Services when the Supplier agrees them in writing, or if earlier starts to perform them.

3 Principal duties of Supplier

In consideration of the payment by the Customer of the Price and subject to the terms and conditions of the Contract, the Supplier shall from the date of the Contract perform or use reasonable endeavours to procure the performance of the Service and, as the case may be, advise and assist the Customer in connection with the Service. Where in the Contract anything is expressed to be done by the Supplier, that may be done by the Web Master in discharge of the Supplier's obligations, but the Supplier shall not at any time be liable for any default or action of the Web Master. The Web Master Terms will apply to any part of any Service provided by the Web master.

4 Service management

- 4.1 The Supplier and the Customer shall each appoint a Service Manager and a Service Coordinator respectively.
- 4.2 Throughout the period of the Contract the Customer shall afford the Service Manager and such other relevant Supplier personnel access to the premises of the Customer and make available sufficient working space and provide such facilities as they may reasonably require to perform the Services.

5 Principal duties of the Customer

The Customer shall, where relevant, deliver Customer Content to the Supplier in the agreed format, use all reasonable efforts to ensure that it is correct and update it when required to do so pursuant to the Contract and ensure that its obligations are fulfilled within the time schedule set out in the purchase order or as may be specified by the Supplier.

6 Variations

- 6.1 The Customer may prior to Acceptance Date request variations to Content or the Specification by written notice to the Supplier (a 'variation request'). In the event of such a request, the Supplier may in its sole discretion determine whether the variation constitutes change in Specification and the Price and will inform the Customer accordingly in writing.
- 6.2 As soon as practicable after receiving a variation request the Supplier shall indicate in writing to the Customer the terms upon which it will perform the requested variation (the 'revised terms', which may include an increase or decrease in the Price). On and after the Customer accepting the revised terms in writing, the Contract will be deemed amended, but until the Customer so accepts any new terms, the Supplier will be entitled to continue working to (and to be paid for) the unamended Specification.

7 Acceptance

- 7.1 A Service will be deemed accepted by the Customer when the Customer indicates

to the supplier or Web Master in writing or verbally or by Net meeting that the Service is approved. The Customer will not be entitled to decline acceptance on aesthetic grounds or on any ground other than material non-conformity with Specification. Where an advertisement or some other material which is to form part of a composite screen display or is to be incorporated into a template has been approved by the Customer, that approval is authority to the Supplier to display the material in any context and in any position within such display or template.

- 7.2 If the Service Coordinator considers that a Service has materially failed to conform to the Specification, he shall promptly notify the Supplier (or where the Supplier so directs, the Web Master specifying the alleged non-conformity. The Supplier (or Web Master will then determine the causes for non-conformity advise the Customer of them and remedy them where technically practicable. Following such remedying the Customer shall promptly review the Service in the same manner and on the same terms as set out above.
- 7.3 If such non-conformity is due in whole or in part to Customer Content or some act or default of the Customer, the Supplier (or Web Master) may so notify the customer in writing and 5 days after such notification the Customer shall be deemed to have accepted the Service and the Supplier will be entitled to be paid for it but the Supplier will continue to work on providing or procuring the Service subject to the Customer paying such additional cost as will be due in accordance with the Supplier Scale. The Supplier shall also be entitled to charge for the costs of investigation.
- 7.4 If any delay in achieving acceptance of a Service is due to delay or error of the Customer or other cause beyond the control of the Supplier, the relevant dates set out in the purchase order shall be deemed deferred as agreed or determined by an expert's decision.

8 Support and Maintenance

- 8.1 *Support Request:* The Customer will make all support calls on the contact details as stated in the purchase order. The Supplier shall be entitled to change the contact details from time to time upon reasonable prior written notice to the Customer.
- 8.2 *Downtime:* In the event of any update or error correction the Supplier shall use all reasonable endeavours to perform the support in accordance with the Customer's direction as to the timing of the downtime and shall seek to minimise business disruption so far as practicable.
- 8.3 The Web Master Terms shall apply to the provision of the Services save to the extent that the express terms of 8.1 and 8.2 above conflict with the Web Master Terms.

9 Price and payment

- 9.1 In consideration of performance of the Supplier duties under the Contract, the Customer shall pay the Supplier the Price according to the Terms of Payment.

- 9.2 The Price is inclusive of all labour and materials but excludes Value Added Tax.
- 9.3 All payments to the Supplier, by the Customer shall be made prior to the commencement of the Services or as may be specified in the purchase order. All payments shall be made in pounds sterling and by a cheque or (if the Supplier so requests) bank transfer to the account of the Supplier at a bank to be nominated in writing by the Supplier.

10 Intellectual property rights

- 10.1 The Customer grants to the Supplier a royalty-free, world-wide, non-exclusive licence to use the Customer Content for the purposes of the Services.
- 10.2 The Supplier grants to the Customer a non-exclusive licence to use the Supplier Content for the purposes of and as part of the Services provided to the Customer by the Supplier or the Web Master.

11 Warranties

- 11.1 The Supplier warrants and represents to the Customer that:-
- (a) Services will at the Acceptance Date correspond with the Specification;
 - (b) the Customer's use of the Services in accordance with the terms of the Contract and the Web Master Terms shall not infringe the intellectual property rights of any third party.
- 11.2 The Customer warrants and represents to the Supplier that the Supplier's use of the Customer Content in accordance with the terms of the Contract will not infringe the intellectual property rights of any third party and accordingly indemnifies the Supplier of any liability or claim by such third party.
- 11.3 The warranties given by the Supplier under clause 11.1 are subject to the following conditions:
- (a) the Supplier shall be under no liability in respect of any defect in the Service arising from Customer Content or the Specification supplied by the Customer;
 - (b) the Supplier shall be under no liability in respect of any defect arising from failure by the Customer to follow the Supplier's instructions (whether oral or in writing), misuse or alteration or adaptation of the Service provided without the Supplier's approval;
 - (c) the Supplier shall be under no liability if the total price for the Service has not been paid by the due date for payment;
 - (d) Where the Service are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions;
 - (e) Any claim by the Customer which is based on any defect in the quality or

provision of the Service or their failure to correspond with specification or any shortage shall be notified to the Supplier within 7 days from the date of Customer becoming aware of such defect. If the Customer does not so notify the Supplier, the Customer shall not be entitled to reject the Service and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Service had been delivered in accordance with the Contract;

- (f) Where any valid claim based on any defect in the quality or provision of the Service (or any component), or their failure to meet Specification, is notified to the Supplier in accordance with these conditions, the sole and exclusive remedy of the Customer will be:
 - (a) in the case of downtime of the Supplier's or Web Master's servers, a refund or (at the Supplier's sole discretion) credit for a part of the hosting fee proportionate to the period of downtime;
 - (b) in any other case to require the Supplier to rectify the defect in Service or at the Supplier's sole discretion, refund to the Customer the price of such defective Service.

12 Liability

- 12.1 The Supplier supplies a very wide range of Services. Standard Services from the Supplier catalogues are not designed specifically for a particular end-use of a particular Customer. The Customer is responsible for identifying which Service it requires and Services are provided according to the requirements of the Customer. Those requirements and the use of the Services are under the control of the Customer. Accordingly, the remedy stated in para 11.4 (f) above states the Supplier's entire liability except in respect of death or personal injury caused by the Supplier's negligence, and except as expressly provided in these conditions, the Supplier shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss, damage, injury, cost or expense of any kind, whatever and however caused, arising directly or indirectly in connection with the Contract including (without limitation) loss of profits, or of anticipated savings or any consequential loss or damage whatsoever (and whether any of the above are caused by the negligence of the Supplier, its employees or agents, or otherwise) which arise out of or in connection with the provision of the Services or their use by the Customer or any third party including the event of web failure or downtime even if the loss is reasonably foreseeable or the Supplier has been advised of the possibility of the Custom, incurring it. The Customer is advised to effect insurance cover accordingly.
- 12.2 Save as expressly set out in the Contract all representations, warranties, terms and conditions, whether oral or written, express or implied by law, custom, statute or otherwise and including but not limited to satisfactory quality or fitness for any particular purpose are excluded, save for the statutorily implied terms as to title.
- 12.3 The Supplier's entire liability to the Customer 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 the Contract shall in any event be limited to the aggregate of all sums paid as

Price by the Customer to the Supplier during the Term of the Contract.

- 12.4 The Supplier and Customer have agreed to these conditions on the basis that they, and each provision of each clauses 11 and 12 in particular, are reasonable in the circumstances.

13 Confidentiality

- 13.1 During the term of the Contract and after termination or expiration of the Contract for any reason for a period of 1 year from the date of termination or expiration, the following obligations shall apply to the party disclosing confidential information ('the Disclosing Party') to the other party ('the Receiving Party').

- 13.2 Subject to clause 13.3, the Receiving Party:

13.2.1 may not use any Confidential Information for any purpose other than the performance of his obligations under the Contract;

13.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and

13.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.

- 13.3 The obligations of confidence referred to in all provisions of this clause shall not apply to any Confidential Information that:

13.3.1 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 the receipt of such Confidential Information or other information by the said party;

13.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

13.3.3 is required to be disclosed by any applicable law or regulation;

13.3.4 is received in good faith by the recipient party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the other party to the Contract in respect thereof and who imposes no obligations of confidence upon the Receiving Party.

- 13.4 The obligations of the parties under all provisions of this clause shall survive the expiry or the termination of the Contract for whatever reason.

- 13.5 Notwithstanding anything said in this clause 13, the Customer authorises the Supplier to disclose the Confidential Information to any of its agents or suppliers for the purpose of providing the Service.

- 13.6 For the purpose of providing Service, the Customer hereby authorises the Supplier to export Data (as defined in Data Protection Act 1998) including information relating to its customers, outside the United Kingdom.

14 Termination

14.1 In addition to other rights of the Supplier, the Supplier can terminate the Contract if:

- (a) the Customer fails to pay any part of the Price when due; or
- (b) the Customer commits a material breach of the Contract and fails to remedy the breach within 30 days starting on the day after receipt of notice from the Supplier giving details of the breach and requiring the Customer to remedy it; or
- (c) the Customer initiating a winding up proceeding, a court of competent jurisdiction making an order for the Supplier's winding up.

For the purposes of this clause a solvent amalgamation or reconstruction such that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Customers obligations under the Contract shall not be construed as material breach of the Contract.

14.2 Termination of the Contract for whatever reason shall not affect either:

14.2.1 the accrued rights and liabilities of the Supplier arising in any way out of the Contract as at the date of termination and in particular but without limitation the right to recover damages against the Customer;

14.2.2 any provisions expressed to survive the Contract, which shall remain in full force and effect.

15 Assignment

15.1 The Customer shall not assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of the Contract without the prior written consent of the Supplier.

15.2 The Supplier shall be entitled to assign, transfer, sub-contract or in any manner make over the benefit and/or burden of the Contract or any part of it to any third party.

16 Force majeure

16.1 Neither party shall be deemed to be in breach of the Contract or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under the Contract (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event or circumstance beyond the reasonable control of that party ('an event of force majeure').

16.2 The party relying on the clause 16.1 ('the Affected Party') shall promptly notify the other party ('the Other Party') of the nature and extent of the circumstances giving rise to the event of force majeure.

- 16.3 If the event of force majeure in question prevails for a continuous period in excess of [one] months after the date on which it began, the Other Party may give notice to the Affected Party terminating the Contract. The notice to terminate must specify the termination date, which must be not less than 30 days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the Contract will terminate on the termination date set out in the notice. Neither party shall have any liability to the other in respect of termination of the Contract due to an event of force majeure, but rights and liabilities that have accrued prior to termination shall not be affected.

17. Dispute resolution

- 17.1 All disputes at any time arising between the parties that cannot be resolved by the Service Manager and the Service Coordinator may in the first place be referred to the finance directors of the parties. If they are unable to resolve the dispute, it may be referred to an expert.
- 17.2 The expert shall have appropriate qualifications and practical experience to resolve the particular dispute and be agreed by the parties, or if they fail to agree shall be appointed by the President for the time being of the Law Society of England and Wales and the parties share the fees of the expert in equal proportion.
- 17.3 For the avoidance of doubt the provisions of this clause provide for a form of advanced dispute resolution and are not a reference to arbitration.

18 Waiver

- 18.1 A waiver of any term, provision or condition of the Contract shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which it is given.
- 18.2 No failure or delay on the part of any party in exercising any right, power privilege under the Contract shall operate as a waiver of it, nor shall any single or partial exercise of any such right, power or privilege preclude any other further exercise of it or the exercise of any other right, power or privilege.
- 18.3 No breach of any provision of the Contract shall be waived or discharge except with the express written consent of the parties.

19 Invalidity

- 19.1 If any provision of the Contract is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from the Contract and shall be deemed to be deleted from the Contract the validity of the remaining provisions shall not be affected. If any such deletion materially affects the interpretation of the Contract, the parties shall use their best endeavours to negotiate in good faith with a view to agreeing substitute provision that as closely as possible reflects the commercial intention of the parties”.

20 Notices

- 20.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by the Contract shall be in writing and shall be delivered personally or sent by fax or prepaid first class post (air mail if posted to or from a place outside the United Kingdom) to the address notified by the parties at the time of entering the Contract or if so notified subsequently to the other party in writing.

21 Entire Contract

- 21.1 The Contract embodies and sets forth the entire Contract and understanding of the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of the Contract. Neither party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in the Contract save for any representation made fraudulently.
- 21.2 Unless otherwise expressly provided elsewhere in the Contract, the Contract may be varied only by a document signed by both of the parties.

22 Governing law and jurisdiction

The Contract and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to the Contract or its formation, shall be governed by and construed in accordance with the laws of England and the parties irrevocably submit to the exclusive jurisdiction of the courts of England for the purpose of hearing and determining any suit, action or proceedings or settling any disputes arising out of or in connection with the Contract and for the purpose of enforcement of any judgment against the respective assets.

23 Exclusion of third party rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and no person other than the parties to the Contract shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.

Parties to the Agreement

Netflare Limited, The Grange, 20 Market Street, Swavesey, Cambridge, Cambridgeshire, CB4 5QG, United Kingdom

and

Company Name

Address 1

Address 1

Address 2

Town / City

County

Postcode

Agreement

Signed

Name (Please Print Clearly)

For Netflare Limited

Date

Signed

Name (Please Print Clearly)

For

Date