

# Web design and development agreement

## PARTIES

1. Darren Barklie (trading as Craft Applied), and operating from The Eagle Lab, Douglas, Isle of Man (the "**Developer**"); and
2. The party identified in Paragraph 1 of Schedule 1 (the "**Customer**").

## AGREEMENT

### 1. Definitions

- 1.1 In this Agreement:

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Assignment Works**" means those elements of the Website and the Documentation (excluding the Third Party Materials and the Customer Materials) the rights in which are to be assigned (rather than licensed) by the Developer to the Customer under Clause 6, as specified in Paragraph 3 of Schedule 1 (Web design and development particulars);

"**Charges**" means the following amounts:

- (a) the amounts specified in Paragraph 7 of Schedule 1 (Web design and development particulars);
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying the Developer's standard time-based charging rates (as notified by the Developer to the Customer before the date of this Agreement) by the time spent by the Developer's personnel performing the Services;

"**Customer**" means the party identified in the specification for the Website set out in Paragraph 2 of Schedule 1 (Web design and development particulars), being a natural person who is duly authorised to enter into this Agreement on behalf of the Customer.

"**Customer Materials**" means all works and materials supplied by or on behalf of the Customer to the Developer for incorporation into or integration with the Website, or for use in connection with the Services;

"**Developer Credit**" means a textual credit for the Developer incorporating a link to the website of the Developer, in a form agreed by the parties acting reasonably;

"**Development Services**" means the design and development of the Website by the Developer;

**"Documentation"** means the documentation (if any) for the Website produced by the Developer and delivered or made available by the Developer to the Customer;

**"Effective Date"** means the date of execution of this Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Licensed Works"** means the Website excluding the Assignment Works, the Third Party Materials and the Customer Materials;

**"Schedule"** means any schedule attached to the main body of this Agreement;

**"Services"** means any services that the Developer provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

**"Source Code"** means software code in human-readable form, including human-readable code compiled to create software or decompiled from software, but excluding interpreted code;

**"Term"** means the term of this Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2;

**"Third Party Materials"** means the works and/or materials comprised in the Website excluding the Customer Materials, the Intellectual Property Rights in which are owned by a third party, and which are specified in Paragraph 5 of Schedule 1 (Web design and development particulars) or which the parties agree in writing shall be incorporated into the Website;

**"Website"** means the website developed or to be developed by the Developer for the Customer under this Agreement, as specified in Schedule 1 (Web design and development particulars), including all the Source Code for that website created by the Developer in the course of providing the Services;

**"Website Defect"** means a defect, error or bug in the Website having a material adverse effect on the appearance, operation, functionality, security or performance of the Website, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer or any person authorised by the Customer to use the Website;
- (b) any use of the Website contrary to the Documentation by the Customer or any person authorised by the Customer to use the Website;

- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Website and any other system, network, application, program, hardware or software not specified as compatible in the Website Specification; and

"**Website Specification**" means the specification for the Website set out in Paragraph 2 of Schedule 1 (Web design and development particulars), as it may be varied by the written agreement of the parties from time to time.

## **2. Term**

2.1 This Agreement shall come into force upon the Effective Date.

2.2 This Agreement shall continue in force until:

- (a) the Development Services and any other Services that the Developer has an obligation to provide to the Customer under this Agreement have been completed;
- (b) the Website has been delivered to the Customer; and
- (c) the Charges have been paid to the Developer in cleared funds, upon which this Agreement will automatically terminate, subject to termination in accordance with Clause 12.

## **3. Development Services**

3.1 The Developer shall provide the Development Services to the Customer.

3.2 The Developer shall use reasonable endeavours to ensure that the Development Services are provided in accordance with the timetable set out in Paragraph 6 of Schedule 1 (Web design and development particulars.)

3.3 The Customer acknowledges that a delay in the Customer performing its obligations under this Agreement may result in a delay in the performance of the Development Services; and subject to Clause 11.1 the Developer will not be liable to the Customer in respect of any failure to meet the Development Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under this Agreement.

3.4 If this Agreement terminates before the delivery of the completed Website to the Customer, the Developer must within 14 days following such termination deliver to the Customer the Website.

## **4. Customer obligations**

4.1 Save to the extent that the parties have agreed otherwise in writing, the Customer must provide to the Developer, or procure for the Developer, such:

- (a) co-operation, support and advice;
- (b) information and documentation; and
- (c) governmental, legal and regulatory licences, consents and permits,

as are reasonably necessary to enable the Developer to perform its obligations under this Agreement.

- 4.2 The Customer must provide to the Developer, or procure for the Developer, such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Developer to enable the Developer to perform its obligations under this Agreement.

## **5. Customer Materials**

- 5.1 The Customer must supply to the Developer the Customer Materials specified in Paragraph 4 of Schedule 1 (Web design and development particulars), in accordance with the timetable specified in Paragraph 6 of Schedule 1 (Web design and development particulars).
- 5.2 The Customer hereby grants to the Developer a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Materials to the extent reasonably required for the performance of the Developer's obligations and the exercise of the Developer's rights under this Agreement, together with the right to sub-license these rights to the extent reasonably required for the performance of the Developer's obligations and the exercise of the Developer's rights under this Agreement.
- 5.3 The Customer warrants to the Developer that the Customer will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

## **6. Intellectual Property Rights**

- 6.1 The Developer hereby assigns to the Customer with full title guarantee all of the Intellectual Property Rights in the Website, excluding the Intellectual Property Rights in the Customer Materials and the Third Party Materials. This assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights. This assignment shall take effect in respect of a work upon the delivery of that work to the Customer.
- 6.2 Subject to any express written agreement between the parties, the Developer shall ensure that the Third Party Materials are:
- (a) licensed to the Customer in accordance with the relevant licensor's standard licensing terms (which the Customer acknowledges may be open source or *Creative Commons* licensing terms);
  - (b) licensed to the Customer on reasonable terms notified by the Developer to the Customer;
- 6.3 To the maximum extent permitted by applicable law:
- (a) the Developer irrevocably and unconditionally waives all moral rights (including rights of paternity and rights of integrity) in respect of the Website to which the Developer may at any time be entitled; and
  - (b) the Developer undertakes to ensure that all individuals involved in the preparation of the Website will irrevocably and unconditionally waive all moral rights (including rights of paternity and rights of integrity) in respect of the Website to which they may at any time be entitled.
- 6.4 The Developer must use reasonable endeavours to:
- (a) do or procure the doing of all acts; and

(b) execute or procure the execution of all documents,

that the Customer may reasonably request from time to time in order to perfect or confirm the Customer's ownership of the rights assigned by this Agreement.

## **7. Developer Credit**

7.1 The Developer may include the Developer Credit in a position to be agreed by the parties acting reasonably.

7.2 The Customer must retain the Developer Credit on the Website and any adapted version of the Website, must not interfere with the Developer Credit in any way which will have or may reasonably be expected to have a negative impact upon the value of the Developer Credit to the Developer, and may only remove the Developer Credit at the Developer's request.

## **8. Charges**

8.1 The Customer shall pay the Charges to the Developer in accordance with this Agreement.

8.2 If the Charges are based in whole or part upon the time spent by the Developer performing the Services, the Developer must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Developer any Charges in respect of Services performed in breach of this Clause 8.2.

8.3 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Developer. The Developer is presently not registered for VAT, however should they become registered for VAT in the future, VAT may be charged on amounts stated in the agreement.

8.4 The Developer may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation, providing that no such variation shall constitute a percentage increase in the relevant element of the Charges that exceeds 2% over the percentage increase, since the date of the most recent variation of the relevant element of the Charges.

## **9. Payments**

9.1 The Developer shall issue invoices for the Charges to the Customer from time to time during the Term.

9.2 The Customer must pay the Charges to the Developer within the period of 30 days following the issue of an invoice in accordance with this Clause 9.

9.3 The Customer must pay the Charges by debit card, credit card, bank transfer or cheque (using such payment details as are notified by the Developer to the Customer from time to time).

9.4 If the Customer does not pay any amount properly due to the Developer under this Agreement, the Developer may:

- (a) charge the Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month.)

## **10. Warranties**

- 10.1 The Developer shall provide the Services with reasonable skill and care.
- 10.2 The Developer warrants to the Customer that the Developer has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 10.3 The Developer warrants to the Customer that the Website as provided will conform in all material respects with the Website Specification.
- 10.4 The Developer warrants to the Customer that the Website, when used by the Customer in accordance with this Agreement, will not breach any laws, statutes or regulations applicable under Isle of Man law; providing however that the Developer shall have no liabilities under this Clause 10.4 in respect of any such breach caused by the Customer Materials or the Third Party Materials.
- 10.5 The Developer warrants to the Customer that the Website, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person; providing however that the Developer shall have no liabilities under this Clause 10.5 in respect of any such infringement caused by the Customer Materials or the Third Party Materials.
- 10.6 If the Developer reasonably determines, or any third party alleges, that the use of the Website by the Customer in accordance with this Agreement infringes any person's Intellectual Property Rights, the Developer may acting reasonably at its own cost and expense:
  - (a) modify the Website in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Website Defects into the Website and must not result in the Website failing to conform with the Website Specification; or
  - (b) procure for the Customer the right to use the Website in accordance with this Agreement.
- 10.7 The Customer warrants to the Developer that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 10.8 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## **11. Limitations and exclusions of liability**

- 11.1 Nothing in this Agreement will:
  - (a) limit or exclude any liability for death or personal injury resulting from negligence;

- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
  - (c) limit any liabilities in any way that is not permitted under applicable law; or
  - (d) exclude any liabilities that may not be excluded under applicable law.
- 11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:
- (a) are subject to Clause 11.1; and
  - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 11.3 The Developer shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event.
- 11.4 The Developer shall not be liable to the Customer in respect of any loss of profits or anticipated savings.
- 11.5 The Developer shall not be liable to the Customer in respect of any loss of revenue or income.
- 11.6 The Developer shall not be liable to the Customer in respect of any loss of use or production.
- 11.7 The Developer shall not be liable to the Customer in respect of any loss of business, contracts or opportunities.
- 11.8 The Developer shall not be liable to the Customer in respect of any loss or corruption of any data or database.
- 11.9 The Developer shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.
- 11.10 The liability of the Developer to the Customer under this Agreement in respect of any event or series of related events shall not exceed the greater of:
- (a) £1,000 and
  - (b) the total amount paid and payable by the Customer to the Developer under this Agreement in the 12 month period preceding the commencement of the event or events.
- 11.11 The aggregate liability of Developer to the Customer under this Agreement shall not exceed the greater of:
- (a) £1,000 and
  - (b) the total amount paid and payable by the Customer to the Developer under this Agreement.

## **12. Termination**

- 12.1 The Developer may terminate this Agreement by giving to the Customer not less than 30 days' written notice of termination.

- 12.2 The Customer may terminate this Agreement by giving to the Developer not less than 30 days' written notice of termination.
- 12.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party commits any material breach of this Agreement, and the breach is not remediable;
  - (b) the other party commits a material breach of this Agreement, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
  - (c) the other party persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 12.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
  - (d) if that other party is an individual:
    - (i) that other party dies;
    - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
    - (iii) that other party is the subject of a bankruptcy petition or order.
- 12.5 The Developer may terminate this Agreement immediately by giving written notice to the Customer if:
- (a) any amount due to be paid by the Customer to the Developer under this Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
  - (b) the Developer has given to the Customer at least 30 days' written notice, following the failure to pay, of its intention to terminate this Agreement in accordance with this Clause 12.5.



### **13. Effects of termination**

- 13.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.4, 6.1, 6.4, 7, 9.2, 9.4, 11, 13, 15 and 16.
- 13.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.
- 13.3 Within 30 days following the termination of this Agreement for any reason:
- (a) the Customer must pay to the Developer any Charges in respect of Services provided to the Customer before the termination of this Agreement; and
  - (b) the Developer must refund to the Customer any Charges paid by the Customer to the Developer in respect of Services that were to be provided to the Customer after the termination of this Agreement,
- without prejudice to the parties' other legal rights.

### **14. Subcontracting**

- 14.1 Subject to any express restrictions elsewhere in this Agreement, the Developer may subcontract any of its obligations under this Agreement, providing that the Developer must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.
- 14.2 The Developer shall remain responsible to the Customer for the performance of any subcontracted obligations.

### **15. General**

- 15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 15.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 15.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 15.5 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or

settlement under or relating to this Agreement are not subject to the consent of any third party.

- 15.6 Subject to Clause 11.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 15.7 This Agreement shall be governed by and construed in accordance with Isle of Man.
- 15.8 The courts of the Isle of Man shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## **16. Interpretation**

- 16.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 16.2 The Clause headings do not affect the interpretation of this Agreement.
- 16.3 References in this Agreement to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.
- 16.4 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.