



# **TERMS & CONDITIONS**

**01.01.23**

## Terms and Conditions

### 1 Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.

#### 1.1 Definitions:

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Contract:** the Customer's purchase order and the Supplier's acceptance of it under condition 3.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 6.1.4.

**Customer's Project Manager:** the Customer's manager for the Project appointed in accordance with condition 6.1.1.

**Cybersecurity Laws:** all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

**Deliverables:** all products and materials developed by the Supplier in relation to the Project in any media, including computer programs, scripts, CGI applications, PHP scripts, data bases, application, software, data, diagrams, reports and specifications (including drafts).

**Document:** includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any data.

**Hosting Agreement:** the Supplier's standard hosting agreement.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, rights in domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Maintenance Agreement:** the Supplier's standard system maintenance agreement.

**Open-Source Software:** any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition from time to time, which is included or used in, or in the development of, the Deliverables, or with which the Deliverables are compiled or to which it is linked.

**Pre-existing Materials:** materials which existed before the commencement of the Project.

**Project:** the project as described in the Proposal.

**Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Proposal.

**Proposal:** the detailed proposal describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by the Supplier in accordance with the Contract.

**Services:** the services to be provided by the Supplier under the Contract.

**Supplier:** Hyperbrand Limited registered in England and Wales with registration number 8129181.

**Supplier Materials:** has the meaning given in clause 6.1.6.

**Supplier's Project Manager:** the Supplier's manager for the Project, appointed in accordance with condition 5.4.

**VAT:** value added tax imposed by the Value Added Tax Act 1994 chargeable in the UK tax.

**Vulnerability:** any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

**Virus:** any thing or device (including any software, code, file or programme) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Headings in these conditions shall not affect the interpretation of the Contract.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to **writing** or **written** excludes faxes but not email.

1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2 Application of Conditions

2.1 These conditions shall:

2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 Any costing or timetable provided by the Supplier shall be provided on the basis that the estimate, quote or proposal shall be valid for 30 days only.

### 3 Effect of Purchase Order

The Customer's purchase order (which may be in any written form including without limitation by email) constitutes an offer by the Customer to purchase the Services specified in it on these conditions. Accordingly, the written acknowledgement and/or confirmation of the purchase order by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

### 4 Hosting, Maintenance and Support

4.1 Where the Proposal includes hosting and maintenance services, such services shall be governed by a separate Hosting Agreement and/or separate Maintenance Agreement as applicable. Accordingly these terms and conditions shall not apply to such services.

4.2 Where the Proposal includes the support of any Deliverables, the details of the support services will be set out in the Proposal and form part of the Contract unless the Parties expressly agree in the Proposal that support services are the subject of a separate legally binding agreement.

4.3 Where support of any Deliverables is being provided by the Supplier in accordance with these terms and conditions the Customer shall provide the Supplier with access to its systems for the purpose of carrying out such support, provided that system access shall be remote in all cases except where in the Supplier's opinion direct access is required, and that, in the latter case, the Customer shall provide such further access to its premises as is necessary for the Supplier to carry out its obligations under the Contract.

### 5 Supplier's Obligations

5.1 The Supplier shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Proposal.

5.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence of the Contract. The Supplier shall determine when any Service or element of a Service or a Project Milestone has been completed.

5.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

5.4 The Supplier shall appoint the Supplier's Project Manager who shall have authority to contractually bind the Supplier on all matters relating to the Project. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Project Manager throughout the Project, but may replace that person from time to time where reasonably necessary in the interests of the Supplier's business.

5.5 The Supplier will endeavour to ensure that any developed / designed website or application will function correctly on the server it is initially installed on and that it will function correctly when viewed on the most recent Microsoft, Apple, Google and Mozilla desktop browsers at the time of commissioning and any additional browsers stated in the Proposal.

- The Supplier offers no guarantees of correct function in future versions of browsers stated nor browser software versions not specifically supported.
- 5.6** Unless the Services specifically include the Supplier supporting the Customer's specific browser matrix, the Supplier will test and guarantee the admin access website content management systems to be provided pursuant to the Services will work in Google Chrome via a desktop device. Users using all other browsers may see discrepancies in content style and functionality as these are not supported.
- 6 Customer's Obligations**
- 6.1** The Customer shall:
- 6.1.1** co-operate with the Supplier in all matters relating to the Project and appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on matters relating to the Project;
- 6.1.2** provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- 6.1.3** provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
- 6.1.4** at its own expense supply the Supplier with all necessary Documents and other materials, and all necessary data or other information relating to the Services in accordance with the Proposal. The Client shall ensure the accuracy of all Customer Material;
- 6.1.5** at its own expense retain duplicate copies of all Customer Material and insure against accidental loss or damage. The Supplier shall have no liability for any such loss or damage, howsoever caused; and
- 6.1.6** keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody and at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Material other than in accordance with the Supplier's written instructions or authorisation.
- 6.2** The Client acknowledges that each Deliverable is created according to its own instructions and the Supplier makes no warranty as to its quality or suitability for any purpose or compliance with any rules, regulations, standards or criteria save that the Deliverable(s) will reasonably conform to the Proposal. Where pre-production proofs or drafts are submitted for approval to the Client the Client shall be responsible for the correction of errors or omissions and the Supplier shall bear no liability whatsoever in respect of any errors or omissions subsequently discovered.
- 6.3** If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 6.3.1** without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 6.3.2** the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 6.3; and
- 6.3.3** the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 6.4** Where applications or websites are developed on servers not recommended by the Supplier, the Client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the website to be correctly developed. Where websites are to be developed for hosting that is not of the Supplier, it is the Client's responsibility to provide a suitable testing environment which is identical to the final production environment.
- 6.5** The Client is expected to test fully any website, application or programming developed by the Supplier before being made generally available for use. Where "bugs", errors or other issues are found after the website is live, the Supplier will endeavour (but is not obliged to) to correct these issues to meet the standards of function outlined in the Proposal and limited to the use in the browser matrix agreed.
- 6.6** Where the website is hosted by the Supplier and the Supplier has sole access to the account upon which the website resides a guarantee of correct functioning as outlined in the Proposal will last for 12 months from programming completion. For the purpose of clarity, completion is defined as the time where the Supplier requests approval of the programming which may occur prior to the website or application being made available for general use. The Customer's sole remedy for any failure in functionality pursuant to this clause 6.6 shall be the correction of the defect in question by the Supplier within a reasonable time from notification by the Customer of the defect that is causing the failure.
- 6.7** The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of 12 months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of the Supplier.
- 6.8** Any consent given by the Supplier in accordance with condition 6.7 shall be subject to the Customer paying to the Supplier on demand a sum equivalent to 20% of the then current annual remuneration of the Supplier's employee or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Customer to such employee or subcontractor.
- 7 Change control**
- 7.1** If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 7.2** If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 7.2.1** the likely time required to implement the change;
- 7.2.2** any variations to the Supplier's charges arising from the change;
- 7.2.3** the likely effect of the change on the Proposal; and
- 7.2.4** any other impact of the change on the terms of the Contract.
- 7.3** If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 7.4** If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Proposal and any other relevant terms of the Contract to take account of the change.
- 8 Charges and payment**
- 8.1** Clause 8.2 shall apply if the Services are to be provided on a time-and-materials basis. Clause 8.3 and clause 8.4 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 8 shall apply in either case.
- 8.2** Where the Services are provided on a time-and-materials basis:
- 8.2.1** the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time;
- 8.2.2** the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
- 8.2.3** the Supplier shall be entitled to charge at its standard overtime rates of the normal rate for part days and for time worked by members of the project team outside the hours referred to in clause 8.2.2 on a pro-rata basis;
- 8.2.4** the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 8.2.5; and
- 8.2.5** the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials for the month concerned, calculated as provided in this condition 8.
- 8.3** Where the Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Proposal and shall be payable in instalments on the dates specified in the Proposal.
- 8.4** Any fixed price contained in the Proposal excludes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier.
- 8.5** Subject to clause 4.2 where the Services include support services these may be provided free of charge for a period of time as specified in the Proposal. Where support services are not provided free of charge they will be charged in accordance with clause 8.2.
- 8.6** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.7** Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- 8.7.1** charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded monthly until payment is made, whether before or after any judgment; and
- 8.7.2** suspend all Services until payment has been made in full.
- 8.8** Time for payment shall be of the essence of the Contract.
- 8.9** The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.
- 8.10** All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 8.11** All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The

Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## 9 Intellectual Property Rights

### 9.1 In relation to the Deliverables:

9.1.1 the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials. Accordingly any scripts, CGI applications, PHP scripts, data bases, application or software written by the Supplier shall remain the copyright of the Supplier and may be used in future Supplier projects as required and may only be commercially reproduced or sold with the permission of the Supplier;

9.1.2 the Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties;

9.1.3 the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.1.2; and

9.1.4 the licence granted in clause 9.1.2. shall exclude access to all source codes relating to the Deliverables.

9.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

### 9.3 In relation to the Customer Materials, the Customer:

9.3.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and

9.3.2 grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the Contract for the purpose of providing the Services to the Customer.

### 9.4 The Supplier:

9.4.1 warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;

9.4.2 shall, subject to clause 10 (Limitation of liability), indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

9.4.3 shall not be in breach of the warranty at clause 9.4.1, and the Customer shall have no claim under the indemnity at clause 9.4.2, to the extent the infringement arises from:

- the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
- any modification of the Deliverables or Services, other than by or on behalf of the Supplier; and
- compliance with the Customer's specifications or instructions.

### 9.5 The Customer:

9.5.1 warrants that the receipt and use of the Customer Materials in the performance of the Contract by the Supplier, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and

9.5.2 shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of the Contract of the Customer Materials.

9.6 If either party (**the Indemnifying Party**) is required to indemnify the other party (**the Indemnified Party**) under this clause 9, the Indemnified Party shall:

9.6.1 notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 9.4.2 or clause 9.5.2 (as applicable) (**IPRs Claim**);

9.6.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;

9.6.3 provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and

9.6.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## 10 Limitation of liability

10.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

10.1.1 any breach of the Contract however arising;

10.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and

10.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 In light of the express obligations on the supplier set out in these conditions all warranties, conditions and other terms implied by statute or common law are, to the greatest extent permitted by law, excluded from the Contract. Without limitation, the Supplier specifically denies any implied or express representation that the Deliverables will be fit:

10.2.1 to operate in conjunction with any hardware items or software products other than with those that are identified in the Proposal as being compatible with the Deliverables; or

10.2.2 to operate uninterrupted or error-free.

10.3 Any unauthorised modifications, use or improper installation of the Deliverables by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under the Contract null and void.

10.4 Any Open-Source Software provided by the Supplier shall be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 10.2.

10.5 Save in respect of any specific warranties given elsewhere in these conditions, the Supplier does not warrant or guarantee that the Deliverables, when taken in whole or in part, will:

10.5.1 comply with Cybersecurity Laws, or

10.5.2 contain no Vulnerabilities,

and it shall be the Customer's sole responsibility to ensure that the Proposal details all of the Customer's cybersecurity requirements, including any requirements that might be imposed on the Customer's business, operations or systems under Cybersecurity Laws, in sufficient detail so they can be implemented by the Supplier as part of the Services.

### 10.6 The Customer:

10.6.1 warrants to the Supplier that it will at all times comply with all applicable laws and regulations with respect to its activities under the Contract and in connection with any part of the Deliverables;

10.6.2 shall take reasonable steps not to introduce any Virus or Vulnerability to the Deliverables or the network and information systems of the Supplier;

10.6.3 shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of any non-compliance by the Customer with this clause 10.6.

10.7 Nothing in these conditions excludes the liability of the Supplier:

10.7.1 for death or personal injury caused by the Supplier's negligence; or

10.7.2 for fraud or fraudulent misrepresentation.

10.8 Subject to clause 10.7, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

10.8.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

10.8.2 any loss or corruption (whether direct or indirect) of data or information;

10.8.3 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or

10.8.4 any loss or liability (whether direct or indirect):

(a) under or in relation to any other contract;

(b) for any hacking or malicious tampering of any Deliverable;

(c) to any end customer of the Customer;

10.8.5 any costs or expenses or losses incurred by the use of any Deliverable created for the Customer. Whilst every care has been taken to ensure Deliverables are problem free and accurate the ultimate responsibility lies with the Client to ensure all Deliverables are functioning correctly before use;

10.9 Subject to clause 10.7 and clause 10.8 the Supplier's total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

10.10 Unless the Customer notifies the Supplier that it intends to make a claim



in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 30 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.11 This clause 10 shall survive termination of the Contract.

## 11 Termination

11.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- 11.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- 11.1.2 the other party commits a material breach of any other term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 11.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 11.1.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 11.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 11.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party;
- 11.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 11.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party.

11.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Customer 30 days' written notice.

11.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

11.4 The Contract shall automatically expire upon completion of the Services.

## 12 Consequences of Termination

12.1 On termination or expiry of the Contract:

- 12.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

12.2 **Termination for Customer breach or insolvency by Supplier:** In the event of termination of the Contract by the Supplier pursuant to clause 11.1, the licence referred to in clause 9.1.2 will automatically terminate.

12.3 **Termination for Convenience by Supplier:** In the event of termination of the Contract prior to completion of the Project by the Supplier pursuant to clause 11.2, the Supplier may:

- 12.3.1 extend the licence referred to in clause 9.1.2 to include a licence of the source code for the Deliverables (FTP access) for the sole purpose of enabling the Customer to take a back-up of the databases, application, software, CGI applications, or PHP Scripts in order to continue operation; or
- 12.3.2 refund the Customer for any payments made by the Customer prior to termination in respect of time not incurred by the Supplier on the Project.

12.4 **Website or e-commerce solutions:** Where the Project to which a Contract relates is in respect of a website or e-commerce solution:

- 12.4.1 if the Customer terminates the Contract pursuant to clause 11.1 (Breach or insolvency of Supplier) or
- 12.4.2 the Supplier ceases to trade for any reason after the Contract has expired,

the licence referred to in clause 9.1.2 shall continue in perpetuity and shall

automatically be deemed extended to include a licence of the source code for the Deliverables (FTP access) for the sole purpose of enabling the Customer to take a back-up of the databases, application, software, CGI applications, or PHP Scripts in order to continue operation.

12.5 **Management system solutions:** Where the Project to which the Contract relates is in respect of a management system solution:

12.5.1 if the Customer terminates the Contract pursuant to clause 11.1 (Breach or insolvency of Supplier); or

12.5.2 if the Contract expires and the Customer has not engaged the Supplier to providing hosting services for the solution,

the licence referred to in clause 9.1.2 shall continue in perpetuity and shall automatically be deemed extended to include a licence of the source code for the Deliverables (FTP access) for the sole purpose of enabling the Customer to take a back-up of the databases, application, software, CGI applications, or PHP Scripts in order to continue operation.

12.6 For the avoidance of doubt where the Customer is granted a licence to use the source code in accordance with these terms, any existing hosting, support or maintenance obligations of any nature of the Supplier shall automatically cease to apply and, notwithstanding clause 12.7 below, the Supplier shall be deemed released from all and any liability to the Customer in respect of hosting, support and maintenance relating to the period before the grant of the source code licence.

12.7 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

12.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 13 Force majeure

13.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- 13.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 13.1.2 epidemic or pandemic;
- 13.1.3 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 13.1.4 nuclear, chemical or biological contamination or sonic boom;
- 13.1.5 any law or any action taken by a government or public authority;
- 13.1.6 collapse of buildings, fire, explosion or accident;
- 13.1.7 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
- 13.1.8 interruption or failure of utility service.

13.2 Provided it has complied with clause 13.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the **Affected Party** shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.3 The Affected Party shall:

- 13.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- 13.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 30 days' written notice to the Affected Party.

## 14 General

14.1 Assignment and other dealings.

14.1.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

14.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier not to be unreasonably withheld.

14.2 Confidentiality.

14.2.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.2.

14.2.2 Each party may disclose the other party's confidential information: (a) to its employees, officers, representatives, contractors,

subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.2; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

**14.2.3** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**14.3** Entire agreement.

**14.3.1** The Contract constitutes the entire agreement between the parties and save for any Hosting Agreement and / or Maintenance Agreement, supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**14.3.2** Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

**14.3.3** Nothing in this clause shall limit or exclude any liability for fraud.

**14.4** Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**14.5** Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**14.6** Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 14.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**14.7** Notices.

**14.7.1** Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case);

**14.7.2** Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

**14.7.3** This clause 14.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**14.8** Third party rights.

**14.8.1** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**14.8.2** The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**14.9** Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**14.10** Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

I accept and agree to these Terms and Conditions for and signed on behalf of the company detailed below (the Customer).

Signature

Dated:

Full Name:

Position:

Email:

Phone:

Company name:

Company number:

Company registered address:

Signed for and on behalf of Hyperbrand Limited:

Signature:

Full Name:

Dated: