

PART B LEGAL TERMS

1 Definitions and Interpretations

1.1 In this agreement, including all Schedules and annexes:

“Business Day” means a day other than a day which is a Saturday, Sunday or public holiday in England;

“Commencement Date” means the date set out in Part A of this agreement;

“Force Majeure” means any cause affecting the performance by a party of its obligations under this agreement, arising from any act, event, omission, happening or non-happening beyond its reasonable control, including (but not by way of limitation) acts of any Governmental authority (including delay or failure to act), fire, flood, war, riot, revolution, epidemics, unusually severe weather, or an industrial or labour dispute;

“IPR” means patents, trade marks, rights in designs (whether registerable or not), database rights, copyright and related rights, rights in the nature of copyright, know-how, confidential information, trade and business names, domain names and other similar rights (including the right to apply for registration of any of the foregoing) whether registerable or not in any part of the world for the full term of the rights concerned;

“Materials” means all documentation, software, images, written works and all other materials supplied by you to us in connection with the provision of Services or which you instruct us to use in connection with the provision of Services;

“Payment Schedule” means the payment schedule set out in Schedule 2 to this agreement;

“Price” means the total price set out in Part A of this agreement;

“Services” means the services listed in Schedule 1 to this agreement.

2 Our Obligations

2.1 In consideration for payment of the Price, we will provide the Services in accordance with the provisions of this agreement. For the avoidance of doubt, failure by you to pay all of the Price in full on the due date or dates for payment as set out in the Payment Schedule will result in us being able to suspend the provision of the Services with immediate effect.

2.2 We will provide the Services using reasonable skill and care.

2.3 Time shall not be of the essence for delivery of the Services.

2.4 We agree to comply with any special conditions detailed in Schedule 3.

2.5 In the event of a discrepancy or conflict between any special conditions detailed in Schedule 3 and the terms and conditions detailed in Part B of this agreement, the special conditions detailed in Schedule 3 shall prevail.

3 Your Obligations

- 3.1 You agree to do all acts and things (including providing us and our subcontractors with access to all information and documentation which is within your possession or control) which is reasonably required by us to enable us to fulfil our obligations under this agreement.
- 3.2 You agree to comply with any special conditions detailed in Schedule 3.
- 3.3 In the event of a discrepancy or conflict between any special conditions detailed in Schedule 3 and the terms and conditions detailed in Part B of this agreement, the special conditions detailed in Schedule 3 shall prevail.

4 Payment

- 4.1 You agree to pay the Price in accordance with the Payment Schedule. Time for payment shall be of the essence.
- 4.2 All payments to be made by you under this agreement are stated exclusive of VAT which shall also be paid by you at the rate and from time to time in the manner prescribed by law.
- 4.3 If any sum payable under this agreement is not paid to us by you by the relevant due date as detailed in the Payment Schedule then you will pay interest on the overdue amount from the date due for payment to the actual date of payment at the rate of 4% per annum above the base lending rate of HSBC Bank from time to time in force. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. Notwithstanding the foregoing, we may in the alternative claim interest at our discretion under the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.4 Unless stated to the contrary in Schedule 1, you will be responsible for any additional costs levied by third parties (e.g. without limitation, domain name registrars or printers) whom we use to provide to you the Services.
- 4.5 All third party costs set out in the Payment Schedule must be paid by you to us in advance for us to forward to such third party. We will not pay such third party fees until such time as we are in receipt of the appropriate funds from you. For the avoidance of doubt we shall not be liable to you for any loss arising as a result of your failure to make full payment on the due dates of any sums detailed in this clause 4.5.

5 Warranties and Indemnities

- 5.1 You warrant that all Materials will be accurate and up to date and that in the event such materials cease to be accurate or up to date you will supply us forthwith with revised, accurate and up to date copies of the Materials.
- 5.2 You warrant that where Materials contain personal data such data will have been collected, stored and processed at all times in accordance with the terms of the Data Protection Act 1998 (the "**Act**"), and that by using such

data in the provision of the Services we and our third party services providers will not be in breach of the Act.

- 5.3 You warrant that the use by us of the Materials in connection with the provision of the Services will not infringe the IPR or any other rights of any other person and will not contain any material which is defamatory of any person nor contain any material which is obscene; offensive; hateful; inflammatory; sexually explicit; endorses or promotes violence; promotes discrimination; is deceptive; is made in breach of any legal duty owed to a third party (such as, without limitation, a contractual duty or a duty of confidentiality); endorses or promotes any illegal activity; is threatening; is abusive; invades another's privacy; is likely to harass any other person; impersonates any person, or misrepresents your identity or affiliation with any person; advocates, endorses, promotes or assists any unlawful act such as (by way of example only) copyright infringement or computer misuse; or is otherwise unlawful.
- 5.4 You indemnify us and hold us fully harmless from and against any and all claims, liabilities, losses, damages and expenses arising out of or based upon any breach of any warranty given by you under this agreement.
- 5.5 If the Services include website hosting you acknowledge and agree that the hosting will be done by a third party on that parties terms and conditions. A copy of those terms and conditions (the "Hosting Terms and Conditions") is attached if applicable. You warrant that you will not, by your act or omission put us in breach of the Hosting Terms and Conditions.
- 5.6 If the Services include website hosting, you warrant that you are the legal proprietor of the websites to be hosted and that you are authorised to grant us and our sub-contractors access to such websites at all material times. You agree that on or before the Commencement Date you will provide us with all passwords and any other information which we may require to enable us and our sub-contractors to access and host such websites.

6 Limitation of Liability

- 6.1 Notwithstanding any other provision of this agreement, neither party's liability under or in connection with this agreement shall be excluded or reduced to the extent that it arises in respect of the following matters:
- (a) for death or personal injury caused by negligence;
 - (b) for fraud or fraudulent misrepresentation;
 - (c) for any other matter which it would be unlawful for you or us (as relevant) to exclude or limit or attempt to exclude or limit liability.
- 6.2 Save for any claim for breach of any warranty given in this agreement or pursuant to any indemnity given in this agreement, neither party shall have any liability to the other (howsoever arising, including liability in tort) under or in connection with this agreement for any:
- (a) loss of profits or anticipated savings;

- (b) loss of revenue (but, for the avoidance of doubt, this shall not exclude any claim by us for payment by you of the Price);
- (c) loss of or damage to reputation or goodwill;
- (d) loss of opportunity;
- (e) wasted management or other staff time;
- (f) losses or liabilities under or in relation to any other contract (save that we can sue you for any losses or liabilities we incur in relation to any contract with any sub-contractor we use in connection with the provision of the Services where such loss/liability arises as a result of your breach of this agreement)

in each case whether direct, indirect, special and/or consequential loss or damage; or

- (g) for any other indirect, consequential and/or special loss or damage.

6.3 We strongly recommend you take our suitable insurance to cover the types of loss, damage, expense and/or liability listed in sub-clause 6.2 of this agreement.

6.4 Our total maximum aggregate liability to you in contract, tort (including negligence and breach of statutory duty), misrepresentation and/or otherwise howsoever arising under or in connection with this agreement shall be limited to the Price.

6.5 You and us agree that this clause is fully understood and that the Price and all other mutual agreements of the parties set forth in this agreement are arrived at having regard to the provisions of this clause 6.

6.6 In case of any conflict between this clause 6 and any other clause of this agreement, the provisions of this clause 6 shall prevail.

7 Intellectual Property

7.1 All IPR existing prior to the Commencement Date shall belong and continue to belong to the party that owned such IPR immediately prior to the Commencement Date.

7.2 You hereby grant to us an irrevocable, world-wide, royalty free licence for the duration of this agreement to use in connection with the provision of the Services any IPR belonging to you.

7.3 All IPR created by us in connection with the provision of the Services shall belong to us.

8 Termination

- 8.1 On the occurrence in respect of one party of an Event of Default (as defined below), the other party (the “Aggrieved Party”), may terminate this agreement immediately by written notice to the defaulting party (the “Defaulting Party”).

“Event of Default” means any of the events set out below¹:

8.1.1 Breach

The Defaulting Party fails to perform or comply with any of its obligations under this agreement and (if capable of remedy) fails to remedy such failure to the reasonable satisfaction of the Aggrieved Party within the period of 28 Business Days after the service on the Defaulting Party of a notice from the Aggrieved Party specifying the breach and requiring it to be remedied.

8.1.2 Insolvency

Any of the following occur in respect of the Defaulting Party:

- (a) a meeting of creditors of that person being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that person;
 - (b) a chargeholder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of that person;
 - (c) that person ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986.
 - (d) that person or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, appointing or making an application to the court for the appointment of an administrator;
 - (e) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that person; or
 - (f) the happening in relation to that person of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.
-

8.2 Without restricting our rights pursuant to clause 8.1, we shall be entitled at anytime on giving notice to you to suspend the provision of the Services with immediate effect if you are in breach of this agreement.

9 Consequences of Termination

9.1 The termination or expiry of this agreement for any reason shall not affect any accrued rights or liabilities of either party under this agreement, nor the coming into force or the continuance in force of any provision of this agreement which is expressly or by implication intended to come into, or continue, in force on or after such expiration or termination. If a party exercises a right to terminate consequent on any breach by the other party, such termination shall be without prejudice to any rights which the party exercising such right may have in respect of such breach who shall be entitled to recover from the other party any loss suffered as a result of the early termination of this agreement.

9.2 The provisions of this clause 9 and clauses 1 (Definitions and Interpretations), 5 (Warranties and Indemnities), 6 (Limitation of liability), 7 (Intellectual Property) and 10 to 16 inclusive shall remain in effect notwithstanding termination or expiry of this agreement.

10 Force Majeure

10.1 If a party (the "Affected Party") is prevented from or delayed in performing any of its obligations under this agreement (the "Affected Obligations") due to an occurrence of Force Majeure, the following provisions of this clause 10 shall apply.

10.2 Upon the occurrence of Force Majeure, the Affected Party shall within 28 Business Days give written notice of the occurrence to the other party (the "Non-affected Party") specifying the circumstances giving rise to Force Majeure, the Affected Obligations and the period by which it estimates its performance of the Affected Obligations may be delayed or, if performance is entirely prevented or it is unable to make an estimate of the delay, stating that it is so prevented or unable to estimate any period.

10.3 If notice is given within the period specified in clause 10.2 the Affected Party will not be in breach of this agreement, nor liable for any failure or delay in performance, and the time for performing the Affected Obligations shall be suspended for any period during which the Affected Party is unable to perform or delayed in performing the Affected Obligations by reason of the Force Majeure so notified.

10.4 In the event that:

- (a) the period during which the suspension referred to in clause 10.3 has continued for a continuous period of 28 Business Days or for a period which when aggregated with any early periods of suspension exceeds 28 Business Days; or

(b) at any earlier time the Non-affected Party concludes on reasonable grounds

that there is no reasonable prospect that the period during which the suspension referred to in clause 10.3 will terminate will be less than a continuous period of 28 Business Days or a period which when aggregated

with any early periods of suspension will exceed 28 Business Days,

then within 28 Business Days following the occurrence of such/either event the Non-affected Party may terminate this agreement by written notice to the Affected Party.

10.5 If this agreement is terminated in accordance with clause 10.4, each party shall remain liable for any liabilities accrued and occurring before such termination and we will be reimbursed by you at a reasonable rate for all work done by us but not invoiced prior to termination, but neither party shall be liable to the other for any loss arising as a result of such termination.

10.6 The Affected Party shall, without being obliged to incur any expenditure or cost, use its endeavours to:

(a) mitigate the effects of the Force Majeure on the performance of its obligations

under this agreement; and

(b) bring the Force Majeure to an end or find a solution by which this agreement

may be performed despite the continuance of the Force Majeure.

10.7 During the period of suspension referred to in clause 10.3 the Affected Party shall notify the Non-affected Party regularly in writing of the steps taken to mitigate the effect of the notified Force Majeure with its best estimate as to the period for which such suspension will continue.

11 Notices

11.1 Any notice or other communication to be given under or in connection with this agreement shall be in writing and shall be delivered personally or sent by first class registered post:

11.1.1 in the case of you to: `Wired Media Ltd, 4 Broad Plain, Bristol, BS2 0JP

11.1.2 in the case of us, to the billing address supplied by you;

11.2 In the absence of evidence of earlier receipt, a notice or other communication is deemed given:

11.2.1 if delivered personally, when left at the address referred to in clause 10.1 of this agreement; and

11.2.2 if sent by first class registered post, two (2) Business Days after the day of posting it.

- 11.3 In proving the giving of notice it shall be sufficient to prove that the notice was left or that the envelope containing such notice was properly addressed and posted by first class registered post.

12 Waiver

- 12.1 A waiver of any right, term, provision or condition of, and any consent or approval granted under this agreement will be valid only if it is in writing, signed by the party giving the waiver or granting the consent or approval. Any such waiver, consent or approval will be valid only in the particular instance and for the particular purpose for which it is given and will not constitute a waiver of any other right or remedy.

- 12.2 Any failure (in whole or in part) to exercise or delay in exercising any right, power or remedy ("**Right**") available under this agreement or in law will not constitute a waiver of that or any other Right nor will any single or partial exercise of any Right preclude any other or further exercise of that or any other Right. The rights and remedies provided by this agreement are cumulative and (unless otherwise expressly stated in this agreement) may be exercised without excluding any other rights or remedies available in law.

13 Set-Off

- 13.1 Except as required by applicable law all amounts due under this agreement shall be paid in full without any set-off, restriction, condition, withholding or deduction ("Deduction").

- 13.2 If a Deduction from any payment to be made under this agreement is required by applicable law, the party making the payment (the "Paying Party") shall increase the payment to an amount such that the net amount received by the other party (the "Recipient") (after the Deduction and after any Deduction from the increased payment) is equal to the amount which the Recipient would have been entitled to receive had no such deduction been required.

14 General

- 14.1 You may not, without our prior written consent, legally or equitably dispose or attempt to dispose (including by sale, assignment, gift, transfer or charge) of any of your rights or obligations under or in connection with this agreement, nor sub-contract any of your obligations under this agreement nor declare a trust of or allow to be constituted as trust property the benefit of your rights or interests in this agreement.

- 14.2 This agreement may only be verified in writing signed by or on behalf of both of the parties.

- 14.3 The invalidity or unenforceability of any clause of this agreement shall not affect the validity or enforceability of any other clause of this agreement which shall continue in full force and effect except for any such invalid or unenforceable clause.

- 14.4 A person who is not a party to this agreement has no right to enforce any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.

14.5 You agree that we may sub-contract any or all of our obligations under this agreement.

15 Entire Agreement

15.1 This agreement (constituting Part A, Part B and Schedule 1 – 3 inclusive, plus any annexes) contains and constitutes the entire understanding and agreement between the parties about the subject matter of this agreement and supersedes all earlier agreements and understandings between them and all earlier representations by any party about such subject matter.

15.2 You warrant that there is no representation, warranty, promise, term, condition, obligation or statement upon which you have relied in entering into this agreement and which is not expressly set out in this agreement and no such representation, warranty, promise, obligation, statement or any other term or condition is to be implied in it whether by virtue of any usage or course of dealing or otherwise (including, subject to sub-clause 6.1, by statute or common law) except as expressly set out in this agreement.

15.3 If a party has given any representation, warranty, promise or statement then (except to the extent that it has been set out in this agreement) the party to whom it is given waives any rights or remedies which it may have in respect of it.

15.4 This clause 15 shall not exclude the liability of a party for fraud or fraudulent misrepresentation or concealment or any resulting right to rescind this agreement.

16 Law and Jurisdiction

16.1 This agreement (and any dispute or claim relating to it, its enforceability or its termination or which may otherwise arise in connection with it) is to be governed in all respects by and construed in accordance with English law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales as regards any claim, dispute or matter arising out of or in connection with this agreement.