

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.
- Additional Charges:** mean any additional charges charged by Koogar as a result of design changes, the Customer seeking the addition of additional Works or default on the part of the Customer.
- Acceptance:** the acceptance or deemed acceptance of the Work by the Customer.
- Acceptance Certificate:** the form of certificate served on Koogar by the Customer to acknowledge Acceptance.
- Acceptance Tests:** the tests to be carried out on the Site as set out in clause 2.
- Business Day:** any day (other than a Saturday or Sunday) when banks are generally open for normal business in London.
- Change Control Procedures:** the procedures set out in Part II of the Project Plan.
- Charges:** the charges in respect of the Services set out in Order Confirmation and any Additional Charges
- Confidential Information:** has the meaning given in clause 17.1.
- Customer:** the customer named in panel one of the Order Confirmation.
- Defects:** has the meaning given in clause 2.4.
- Design:** a design produced by Koogar for the Customer in accordance with the Design Brief and Project Plan.
- Design Agency:** the Customer's design agency particulars of which are set out in the Project Plan.
- Design Brief:** a brief from the Customer setting out the type of design it is seeking in sufficient detail for Koogar to thereafter produce graphical designed materials
- Effective Date:** the date on which the Order Confirmation is sign and the First Payment is received.
- First Payment:** the payment named as such on the Order Confirmation.
- Force Majeure Event:** has the meaning given in clause 16.1.
- Koogar:** Koogar Limited (CRN 06943165) whose registered office is at St James Business Centre, Wilderspool Causeway, Warrington. Cheshire. WA4 6PS
- Intellectual Property Rights:** all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights,

database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Marketing Campaign: a campaign in accordance with the terms of the Marketing Plan.

Marketing Plan: a plan agreed between the Customer and Koogar for the marketing of the Customer's business as set out in the Project Plan.

Materials: the content provided to Koogar by the Customer from time to time for incorporation in the Site.

Non-Koogar Defects: those Defects described in clause 2.4.

Order Confirmation: the order confirmation to which these Terms and Conditions are attached.

Phase: in relation to the Project Plan, one of the three key phases of work identified in Project Plan.

Project: the provision by Koogar of the Services as set out in Project Plan.

Project Plan: the document setting out the particulars of the Works and the timetable by which Koogar will implement the Project.

Server: a high-performance computer server administered by Koogar, as more particularly particularised in the Project Plan.

Services: the Works to be provided pursuant to this agreement as detailed in the Project Plan.

Site: the website at the URL designated by the Customer or to be hosted by Koogar pursuant to this agreement.

Site Software: the software for the Site commissioned by the Customer as specified in the Project Plan

Site Specification: the specification for the Site set out in Project Plan.

Third Party Products: those third party software products set out in the Project Plan.

Work: the work to be delivered by Koogar as indicated in Panel 3 of the Order Confirmation

Visitor: a visitor to the Site.

- 1.2 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3 References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- 1.4 In the event and to the extent only of any conflict between the clauses and the schedules, the clauses shall prevail.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

WE PLAN, WE DESIGN AND WE DELIVER!

company number: **06943165**

vat number: **108 6756 95**

Koogar

- 1.7 References to **including** and **include(s)** shall be deemed to mean respectively including without limitation and include(s) without limitation.
- 1.8 References to **content** include any kind of text, information, images, or audio or video material which can be incorporated in a website for access by a Visitor to that website.
- 2. DEVELOPMENT AND ACCEPTANCE OF SITE**
- 2.1 Once Koogar has completed the design and development of the Site in accordance with the relevant Phase of the Project Plan, Koogar shall run the Acceptance Tests. The procedure set out in this clause 2 shall be repeated in respect of the relevant Phase and any further development works agreed by the parties from time to time.
- 2.2 The Acceptance Tests shall test compliance of the Site with the Site Specification. The form and detail of such tests is set out in Project Plan.
- 2.3 Acceptance of the Site shall occur when the Site has passed the Acceptance Tests. Koogar shall notify the customer when the tests have been passed and provide the results of the Acceptance Tests to the Customer in writing.
- 2.4 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Koogar has no responsibility (**Non-Koogar Defect**), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Koogar Defect. Koogar shall provide assistance reasonably requested by the Customer in remedying any Non-Koogar Defect by supplying additional services or products. The Customer shall pay Koogar in full for all such additional services and products at Koogar's then current fees and prices.
- 2.5 Acceptance of the Site shall be deemed to have taken place upon the occurrence of any of the following events:
- (a) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - (b) the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which Koogar is ready to commence running such Acceptance Tests or retests.
- 3. CUSTOMER RESPONSIBILITIES**
- 3.1 The Customer acknowledges that Koogar's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of the design specifications provided by the Design Agency (if applicable) and any information and data the Customer provides to Koogar. Accordingly, the Customer shall:
- (a) provide Koogar with access to, and use of, all information, data and documentation reasonably required by Koogar for the performance by Koogar of its obligations under this agreement; and
 - (b) instruct and manage the Design Agency if it has engaged such an agency.
- 3.2 The Customer shall be responsible for the accuracy and completeness of the Materials on the Site in accordance with clause 12.
- 4. STAND ALONE DESIGN**
- 4.1 Once Koogar has received a Design Brief it shall within the timetable set out in the Project Plan deliver the Designs in the form set out in the Project Plan.
- 4.2 Acceptance of the Designs shall be deemed to have taken place upon the occurrence of any of the following events:
- (a) the Customer uses any part of the Designs; or
 - (b) the Customer unreasonably delays accepting the Designs as fulfilling the Design Brief.
- 5. MARKETING (INCLUDING SOCIAL MEDIA MARKETING)**
- 5.1 The following provisions shall apply to the Marketing Plan for the term set out in the Marketing Plan.
- 5.2 Subject to the provisions of clause 5.4, the Customer grants to Koogar the exclusive right to develop materials and solicit individuals and other business entities in the promotion of the Marketing Plan.
- 5.3 If applicable to the Marketing Plan the Customer:
- (a) shall provide to Koogar its username and password to its on-line social media accounts including Twitter, Facebook, Wordpress and LinkedIn in order for Koogar to fulfil its obligations under this Agreement;
 - (b) will at all times ensure that its URL and fan, followers or member counts remain visible and accessible by Koogar (i.e. not password protected, geo-ip protected, Facebook geographically restricted, restricted by profiles, privacy settings or account settings); and whilst the Marketing Campaign is running
 - (c) will not allow to be blocked, banned or unfollowed any new fans or followers.
- 5.4 The Customer is free to run any other marketing Campaign provided that the Customer informs Koogar in writing at least 21 days before the start of the other marketing giving sufficient

- details to Koogar so that Koogar may take into account the other marketing when calculating results.
- 5.5 By entering into this Agreement the Customer agrees that the term of the Agreement is the term set out in the Marketing Plan and that if this Agreement is terminated by the Customer earlier than the end of the said term, the Customer shall remain liable for the Charges for the remainder of the said term.
6. **THIRD PARTY PRODUCTS**
The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The one-off licence fee for such Third Party Products is included in the Charges payable pursuant to clause 8.1.
7. **PROJECT MANAGEMENT**
Except for Social Media Training, each party shall appoint a project manager who shall:
- (a) provide professional and prompt liaison with the other party; and
 - (b) have the necessary expertise and authority to commit the relevant party.
8. **CHARGES AND PAYMENT**
- 8.1 Following Acceptance, Koogar shall issue a VAT invoice in respect of the Charges, and the Customer shall pay to Koogar the Charges on the dates set out in the Order Confirmation except for any amount in respect of which there is a genuine dispute.
- 8.2 All Charges are exclusive of VAT.
- 8.3 If the Customer fails to pay any amount payable by it under this agreement, Koogar shall be entitled, but not obliged, to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum above the base rate for the time being of HSBC Bank Plc. Such interest shall accrue on a daily basis and be compounded quarterly. Koogar reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.4 If the Customer fails to pay Koogar the Charges Koogar may:
- (a) require the Customer to pay, in advance, for any Service (both including and in addition to the Service in respect of which it is in default) which has not yet been performed; and/or
 - (b) not perform any further Service; and/or
 - (c) suspend the Site where hosted by Koogar.

9. WARRANTIES

- 9.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.
- 9.2 Koogar shall perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards.
- 9.3 Except for any errors or interrupted use caused as a consequence of any action taken by the Customer or other third party, Koogar warrants that operation of the Site will be uninterrupted and free of errors, viruses and material defects and that the Site will perform in accordance with the Site Specification for a period of 12 months from Acceptance. If the Site does not so perform, Koogar shall, for no additional charge, promptly ensure that the Site complies with the Site Specification.

10. LIMITATION OF REMEDIES AND LIABILITY

- 10.1 Nothing in this agreement shall operate to exclude or limit either party's liability for:
- (a) death or personal injury caused by its negligence; or
 - (b) fraud; or
 - (c) the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors; or
 - (d) any other liability which cannot be excluded or limited under applicable law.

If the Customer is a consumer, any statutory rights which you have, which cannot be excluded or limited, will not be affected by these terms and conditions.

- 10.2 If the Customer is a business, neither party shall be liable to the other for any loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity, or for any indirect or consequential loss or damage.
- 10.3 If the Customer is a business, subject to clause 10.1, each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed £5,000.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software), but excluding the Materials, arising in connection with this agreement shall be the property of Koogar, and Koogar hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site.

- 11.2 The Customer shall indemnify Koogar against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 11.3 Koogar shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 11.2.
- 11.4 The indemnities in clause 11.2, clause 11.3 and clause 12.4 are subject to the following conditions:
- the indemnified party promptly notifies the indemnifier in writing of the claim;
 - the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
 - the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 11.5 The indemnities in clause 11.2 clause 11.3 clause and 12.4 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.
- 12. SITE CONTENT**
- 12.1 Koogar shall update the Site with Materials provided from time to time by the Customer if provided for by the Project Plan. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights (**Inappropriate Content**)).
- 12.2 If provided for by the Project Plan, Koogar shall grant the Customer access to an administration area in order to update information held on the Site.
- 12.3 Koogar shall include only Materials on the Site. The Customer acknowledges that Koogar has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. Koogar reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. Koogar shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.
- 12.4 The Customer shall indemnify Koogar against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- 12.5 Koogar may include the statement "Web Design & Development by [Koogar](#)" on each page of the Site in a form to be agreed.
- 13. DATA PROTECTION**
- 13.1 Koogar warrants that, to the extent it processes any Personal Data on behalf of the Customer:
- it shall act only on instructions from the Customer; and
 - it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 13.2 In this clause 13, **Personal Data** has the meaning given in the Data Protection Act 1988.
- 14. TERM AND TERMINATION**
- 14.1 Unless Koogar has agreed to provide the Customer with an ongoing maintenance plan, this agreement shall commence on the Effective Date and shall (subject to earlier termination pursuant to this clause 14) terminate automatically on Acceptance of the Site and payment of all outstanding sums.
- 14.2 Either party may terminate this agreement immediately at any time by written notice to the other party if:
- that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or
 - that other party:
 - ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
 - becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
 - a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given

- or documents relating to such an appointment are filed with any court; or
- (iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
- (v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).
- 14.3 On termination of this agreement by Koogar pursuant to clause 14.2, all licences granted by Koogar under this agreement shall terminate immediately.
- 14.4 On expiry or termination of this agreement otherwise than on termination by Koogar pursuant to clause 14.2, Koogar shall promptly return all Materials to the Customer, and shall provide to the Customer an electronic copy of the Site (including all content on the Site).
- 14.5 On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.
- 15. CHANGE CONTROL**
Any request to change the scope of the Services shall be processed in accordance with the Change Control Procedure.
- 16. FORCE MAJEURE**
- 16.1 The definition in this clause applies in this agreement.
Force Majeure Event: any event arising which is beyond the reasonable control of the affected party including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war.
- 16.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall
- take all reasonable steps to mitigate the effect of the Force Majeure Event.
- 17. CONFIDENTIALITY**
- 17.1 The definition in this clause applies in this agreement.
Confidential Information: all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:
- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.
- 17.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 17.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 17.4 The obligations set out in this clause 17 shall not apply to Confidential Information which the receiving party can demonstrate:
- (a) is or has become publicly known other than through breach of this clause 17; or
- (b) was in possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.
- 17.5 The obligations of confidentiality in this clause 17 shall not be affected by the expiry or termination of this agreement.
- 18. NOTICES**
- 18.1 A notice given under this agreement:
- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);

- (b) shall be sent for the attention of the person in the e-mail address given in the Order Confirmation Form (or such other person or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received);

19. PUBLICITY

All media releases, public announcements and public disclosures by Koogar relating to this agreement or its subject matter, including promotional or marketing material, shall be coordinated with the Customer and approved by the Customer prior to release.

20. ASSIGNMENT

Koogar may not assign or transfer any of its rights or obligations under this agreement. The Customer may assign or transfer any of its rights or obligations under this agreement, provided it gives prior written notice to Koogar.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes and replaces any and all prior agreements, understandings or arrangements between the parties, whether oral or in writing, with respect to the same. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.

22. THIRD PARTY RIGHTS

- 22.1 This agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.
- 22.2 The right of the parties to terminate, rescind, or agree any amendment, variation, waiver or

settlement under this agreement is not subject to the consent of any person who is not a party to this agreement.

23. VARIATION AND WAIVER

- 23.1 A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.
- 23.2 A waiver of any right under this agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.
- 23.3 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

24. SEVERANCE

- 24.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25. GOVERNING LAW AND JURISDICTION

- 25.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered on the date stated on the Order Confirmation form.