

# PUBLIC<sup>®</sup>

## Terms and Conditions

### 1. DEFINITIONS

**1.1 Agreement** means the Project Proposal, the Development Agreement, the Heads of Agreement, commercial Terms together with Terms and Conditions and any other documents intended by Public to form part of any agreement between the Client and Public.

**1.2 Project** means the scope and purpose of the Client's identified usage of the work product as described in the Project Proposal and or the Agreement as may be applicable from time to time.

**1.3 Services** means all services and the work product to be provided to Client by Public as described and otherwise further defined in the Project Proposal and or the Agreement as may be applicable from time to time.

**1.4 Final Deliverables** means the final versions of Deliverables provided by Public and accepted by Client.

**1.5 Deliverables** means the Services and work product specified in the Project Proposal and or the Agreement as may be applicable from time to time to be delivered by Public to Client.

**1.6 Client Content** means all materials, writing, images or other creative content provided by Client used in preparing or creating the Deliverables.

**1.7 Third Party Materials** means proprietary third-party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration, open source code & 3rd party software.

**1.8 Development Tools** means all tools developed and/or used by Public in performing the Services, including pre-existing and newly developed software including source code, web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.

### 2. SERVICES

**2.1** Public shall perform the Services set out in the accordance with the Project Proposal and or the Agreement and use reasonable commercial endeavours to deliver such Services in accordance with any agreed work plan and/or milestones in order to deliver the Deliverables.

### **3. PROPOSAL (Scope of Work)**

**3.1** The terms of any proposals and this Agreement (are submitted to the Client Subject to Contract) shall expire within thirty (30) days after being submitted to Client where the Client fails to execute or otherwise expressly states its acceptance of any and all proposed terms.

**3.2** In the event that the Agreement expires in accordance with Clause 3.1. above, Public may modify the proposals and/or the Agreement and resubmit it to Client.

### **4. COMPENSATION**

**4.1 Fees:** Client agrees to pay (without deduction) Public all of the fees set out in the Project Proposal, including any and all applicable taxes and/or levies ("Fee/Fees").

**4.2 Expenses:** Client will pay (without deduction) Public any and all expenses, including but not limited to: (a) Incidental and out-of-pocket expenses at cost; (b) Mileage reimbursement, other than normal commuting, at £1 per mile; and (c) Travel expenses, other than normal commuting, but including all airfare; rental vehicles; housing and sustenance; all of the above being approved by the Client ("Expenses").

**4.3 Additional Costs:** pricing and fees set out in the Project Proposal and/or the Agreement includes only Public Fees. Any other costs, including but not limited to hosting, art licensing or photography, will be invoiced/billed to Client for reimbursement in full by the Client ("Addition Costs").

**4.4 Hosting Final Deliverables:** Public will host the Final Deliverables on Public hosting space while the Project is under construction. If the Final Deliverables are not completed by the completion date listed in the Project Proposal and/or the Agreement, where such delay is not caused by any breach or negligence of Public, the Client shall pay Public agreed fees per month for hosting until the Final Deliverables are moved to Clients server.

### **5. PAYMENT**

**5.1** All payments become due as and when Public completes each milestone as set out in the Project Proposal and/or the Agreement and Client accepts the Deliverables in relation to the specific milestone.

**5.2** All invoices are payable within fourteen (14) of issue unless otherwise specified in the Project Proposal or the Agreement. Invoices shall list any expenses and additional costs as separate items all of which shall be payable together.

### **6. LATE PAYMENT**

**6.1 Late Fee:** A monthly service fee of 8% percent, or the maximum allowed by United Kingdom law, is payable on all overdue balances.

**6.2 Crediting Late Payments:** Payments will be credited to late payments first, then to unpaid balances.

**6.3 Collection Expenses:** Client shall pay all collection or legal fees incurred by late payments.

**6.4 Withholding Delivery:** Public may withhold delivery and transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full.

**6.5 Withholding License, Software or Intellectual Property:** All grants of any license to use or transfer ownership of any intellectual property rights under this Agreement are conditioned on full payment, including all outstanding Additional Costs, Expenses, Fees, or any other charges.

## **7. CHANGES TO PROJECT SCOPE**

**7.1** In the event that the Client wants to change the scope of work after acceptance of this Agreement, the Client shall inform Public in writing setting out in full and with sufficient detail the requested changes. Within fourteen (14) of receiving written notice of all required changes, Public will respond with a statement proposing Public's availability, any additional Fees, changes to delivery dates and milestones, together with any modification to the Project Proposal and/or the Agreements. Public will evaluate each written request for the changes at its standard rates and charges.

**7.2** If the changes requested by the Client are at or near twenty percent (20%) of the time required to produce Deliverables, or the value of the value of Services (a "Major Change"), Public shall be entitled to submit a new and separate Project Proposal to Client for approval. Public shall not begin work on the revised services until it receives a fully signed revised Project Proposal, Agreement and/or any additional Fees.

**7.3** If Client requests are not Major Changes (a "Minor Change"), the Client will be invoiced on a time and materials basis at Public's hourly rate depending on nature of service. Such charges shall be in addition to all other amount payable under this Agreement, despite any maximum budget, contract price or final price being identified. Public may extend or modify any delivery schedule or deadlines in the Agreement as may be required by such changes.

**7.4** Acceptance/Rejection: The Client will have fourteen (14) days to respond in writing accepting or rejecting any new proposal. If Client rejects the proposal, Public will not be obligated to perform any services beyond those set out in the original Project Proposal or Agreement.

## **8. DELAYS**

**8.1** Public shall use all reasonable commercial endeavours to meet any work plan's and/or milestones and/or delivery schedule.

**8.2** Public may extend the due date for any Deliverable by giving written notice to Client. The total of all extensions shall not exceed twenty eight (28) days.

**8.3** Client shall use all reasonable efforts to provide needed information, materials and approvals. Any delay by Client will result in a day-for-day extension of the due date for all Deliverables.

**8.4** Any delay caused by conditions beyond the reasonable control of the parties shall not be considered a breach and will result in a day-for-day extension any performance or Deliverables due. Each party shall use reasonable efforts to notify the other party, in writing, of a delay. Conditions beyond the reasonable control of the parties include, but are not limited to, natural disasters, acts of government after the date of agreement, power failure, fire, flood, riots, acts of war, terrorism and epidemics.

## **9. EVALUATION AND ACCEPTANCE**

**9.1** Public will test and correct Deliverables using reasonable commercial endeavours before providing Deliverables to Client.

**9.2** The Client shall, within seven (7) business days after receiving each Deliverable, notify Public in writing of any failure to comply with the specification of the Project Proposal or Agreement or of any other objections, corrections or changes reasonably required acting at all times in good faith.

**9.3** Public shall, within fourteen (14) business days of receiving the Clients notification, correct and submit a revised Deliverable to the Client.

**9.4** The Client shall, within seven (7) business days of receiving a revised Deliverable, either approve the corrected version or make further reasonable changes.

**9.5** In the even that after three (3) corrections by Public, the Client finds the Deliverables are not acceptable acting at all times reasonably and at all time in good faith, the Client may terminate this Agreement in accordance with the termination clauses of this Agreement.

**9.6** Where the Client fails to provide approval or comments during any approval periods set out above, the relevant Deliverables will be considered approved and accepted.

## **10. CLIENT RESPONSIBILITIES**

**10.1** The Client acknowledges that it is responsible for performing the following in timely manner: (a) Provide all Client Content in a form suitable for use in the Deliverables without further preparation by Public, unless otherwise specified in the Project Proposal; (b) Proofread all Deliverables, for the avoidance of any doubt the Client will be charged for correcting errors after the acceptance of any Deliverables.

## **11. ACCREDITATION AND PROMOTION**

**11.1** Public shall be entitled to place accreditation, as a hyperlink or otherwise, in the form, size and location as incorporated by Public in the Deliverables on each page of the Final Deliverables.

**11.2** Public retains the right to reproduce, publish and display the Deliverables in Public's company portfolios and websites, in galleries, design periodicals and all other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses.

**11.3** Either party, subject to the other's reasonable approval (such approval not to be unreasonably withheld or delayed), may describe its role in the Project on its website and in other promotional and marketing materials, and, if not expressly objected to, include a link to the other party's website.

## **12. CONFIDENTIAL INFORMATION**

**12.1** The Client's "Confidential Information" includes information that Public reasonably believe to be confidential.

**12.2** Public 's "Confidential Information" includes (but is not limited to) the source code of any design or Development Tools.

**12.3** All material considered confidential by either party shall be designated as confidential. Confidential Information shall not be disclosed to third parties and shall only used as needed in the performance this Agreement.

**12.4** Confidential Information shall not include any information that is already known by the recipient, becomes publicly known through no fault of the recipient, or is received from a third party without a restriction on disclosure.

### **13. RELATIONSHIP OF THE PARTIES**

**13.1** Public is an independent contractor. Public shall determine, in its sole discretion, the manner and means by which the Services are accomplished. No agency, partnership, joint venture, or employee-employer relationship is intended or created by this Agreement. Neither party is authorised to act as agent or bind the other party except as expressly set out in this Agreement.

**13.2** For the avoidance of any doubt Public the product of its Services, the work product or Deliverables prepared by Public shall not be deemed a work for hire as defined under United Kingdom copyright law. All rights granted to Client are contractual in nature and are expressly defined by this Agreement.

**13.3** Public shall be free to use third party's as independent contractors in connection with the provision of the Services ("Agents").

**13.4** This Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Public, and Public shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Public.

### **14. REPRESENTATIONS AND WARRANTIES**

**14.1** The Client represents and warrants to Public that: (a) the use of the Client Content does not infringe the rights of any third party; (b) it shall comply with each and all of the terms and conditions of any licensing agreements which govern the use of any Third Party Materials; (c) it will obtain all necessary and appropriate rights and licenses to grant license to Public to use such Third Party Materials.

**14.2** Public represents and warrants to Client that: (a) it will provide the Services set out in this Agreement in a professional and workmanlike manner; (b) it shall secure all necessary rights, title, and interest in and to the Final Deliverables, including Designer Tools, sufficient for Public to grant, licence or assign the intellectual property rights provided for in this Agreement; (c) to the best of it's knowledge, the Deliverables will not violate the rights of any third parties; (d) If Client or third parties modify the Deliverables or use the Deliverables outside of the scope or purpose of this Agreement, all representations and warranties of Public shall be void.

**14.3** EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS AGREEMENT, PUBLIC MAKES NO WARRANTIES WHATSOEVER. PUBLIC EXPLICITLY DISCLAIMS ANY OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR COMPLIANCE WITH LAWS OR GOVERNMENT RULES OR REGULATIONS APPLICABLE TO THE PROJECT.

## **15. INDEMNIFICATION AND LIABILITY**

**15.1** The Client shall indemnify Public from any and all damages, liabilities, costs, losses, expenses or attorney fees arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Public shall promptly notify Client in writing of any third-party claim or suit. Client shall have the right to fully control the defence and any settlement of such claim or suit.

**15.2** In the event of any third-party lawsuit or proceeding based on a claim that Deliverables breach the third party's intellectual property rights, and it is determined that such infringement has occurred, Public may at its own expense, replace any infringing content with non-infringing content.

**15.3** THE SERVICES AND THE WORK PRODUCT OF PUBLIC ARE SOLD "AS IS." IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF PUBLIC, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND AFFILIATES ("PUBLIC PARTIES"), TO CLIENT FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CLIENT'S MAXIMUM REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE FEES RECEIVED INCLUDING THE NET PROFIT OF PUBLIC UNDER THIS AGREEMENT. IN NO EVENT SHALL PUBLIC BE LIABLE FOR: (a) ANY LOST DATA OR CONTENT; (b) LOST PROFITS; (c) BUSINESS INTERRUPTION OR (d) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MATERIALS OR THE SERVICES PROVIDED BY PUBLIC, EVEN IF PUBLIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **16. TERM AND TERMINATION**

**16.1** This Agreement shall commence upon the execution by the Client of any document stating the "Effective Date" or any express notification of acceptance of the terms of the Project Proposal and or the Agreement and shall continue until all Services are complete and delivered, or until the Agreement is terminated.

**16.2** Either party may terminate this agreement at any time, on fourteen (14) days prior written notice if the other party is in breach of any of its material responsibilities or obligations under this Agreement and fails to cure that breach during that fourteen (14) day period.

**16.3** Either party may terminate this agreement at any time, on written notice to the other party, if the other party: (a) it ceases to conduct business in its normal course; (b) makes an assignment for the benefit of creditors; (c) is liquidated or otherwise dissolved or insolvent; (d) files a petition in bankruptcy; or a receiver, trustee, or custodian is appointed for it.

**16.4** This Agreement may be terminated by the mutual agreement of the parties as follows: (a) either party may terminate this agreement at any time and for any reason on 21 days prior written notice to the other party.

**16.5** If the Client terminates the Agreement under this section, Public shall, at Client's reasonable discretion, complete any work assigned or scheduled during the notice period in accordance with the terms and conditions of this Agreement.

**16.6** In the event of termination, the Client shall pay Public for the original Project Proposal and/or the Agreement together with the Services supplied hereunder in full. The Client shall also pay all Expenses, Fees, and Additional Costs incurred through the date of termination.

**16.7** On expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) all rights and obligations regarding Confidential Information shall survive.

## **17. RIGHTS TO FINAL DELIVERABLES**

**17.1** Public grants to Client a non-exclusive, perpetual and worldwide license to use, publish and display the Final Deliverables in accordance with this Agreement unless otherwise specified by means of a separate agreement. The rights granted to Client are for use of the Final Deliverables in its original form only. Client may not change, create derivative works or extract portions of the Final Deliverables.

**17.2** Any additional use of any Deliverables by Client outside the scope of the license granted above requires additional fees. Public shall be entitled to further compensation equal to 100% percent of the total original project fee plus a fifty per cent (50%) compensation of all transactions made in use of the Deliverables used unless otherwise agreed in writing by both parties. In the event of non-payment, Public shall be entitled to pursue all remedies available under law and equity.

## **18. RIGHTS TO DELIVERABLES OTHER THAN FINAL ART OR CODE**

**18.1** The Client Content is the exclusive property of the Client. Client grants Public a nonexclusive, non-transferable royalty free license to use, reproduce, modify, display and publish the Client Content solely in connection with the project proposal.

**18.2** Public retains all rights in and to all Preliminary Works (i.e any text, visual, audio visual, audio and other assets). Client shall return all Preliminary Works to Public within thirty (30) days of completion of the Services.

**18.3** All Public Tools are and shall remain the exclusive property or license of Public. Public grants Client a nonexclusive, nontransferable, perpetual, worldwide license to use the Public Tools solely to the extent necessary with the Final Deliverables for the Project.

## **19. SUPPORT SERVICES**

**19.1** During the first month following expiration of this Agreement, (the "Warranty Period") Public shall provide up to three (3) hours of Support Services at no additional cost to Client. Support Services means commercially reasonable technical support and assistance to maintain and update the Deliverables. Requests for additional support will be invoiced on a time and materials basis at Public standard rate.

**19.2** After the Warranty Period expires and at Client's option, Public will provide support services at standard service rate on an hourly basis to be agreed by both parties by way of a separate contract (the "Maintenance Period").

**19.3** The support services supplied during the Warranty Period and the Maintenance Period do not include enhancements or changes to the Project or other services outside the scope of the Project Proposal and/or the Agreement.

## **20. ENHANCEMENTS**

**20.1** During the Maintenance Period, the Client may request that Public develop enhancements to the Deliverables. Public shall use reasonable commercial endeavours to prioritise Public's resources to create such enhancements. Client understands Public may have pre-existing obligations that may delay requested enhancements. Public shall provide any enhancements on a time and materials basis at Public standard rate.

**20.2** Any Alteration of any Deliverable is prohibited without the express written permission of Public. Public will be given the first opportunity to make any required alterations. Unauthorized alterations shall constitute additional use and will be invoiced accordingly.

## **21. TERMINATION.**

**21.1** Public may terminate this Agreement immediately in the event of:

**21.1.1** any material breach of this Agreement that the Client has failed to remedy to the reasonable satisfaction of Public within seven (7) working days of notice from Public setting out the material breach complained of (for the avoidance of any doubt the failure to make any payments of Fees, Expenses and or Additional Fees on time shall be deemed to be a material breach of this Agreement); and

**21.1.2** the insolvent liquidation, bankruptcy or administration of the Client.

## **22. GENERAL**

**22.1** Modifications to this Agreement must be in writing and signed by both parties. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as constituting a continuing waiver or as a waiver of any other breach.

**22.2** All notices under this Agreement shall be given in writing either by: (a) Fax or Email, with return confirmation of receipt; (b) Registered post Any notice will be effective when received, or in the case of email or fax, on confirmation of receipt.

**22.3** The rights or obligations under this Agreement shall not be transferred, assigned or encumbered without the prior written consent of the other party.

**22.4** This Agreement shall be governed and interpreted in accordance with and by the laws of England & Wales. In the event of any litigation between the Client and Public, the parties specifically consent to the jurisdiction of the Courts England & Wales. The parties waive any jurisdictional or venue defences available to them and further consent to service of proceeding by first class registered post.

**22.5** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. Where possible the invalid or unenforceable provision shall be interpreted in such manner as to be effective and valid under applicable law.

**22.6** Headings and numbering used in this Agreement are for convenience and reference only and shall not affect the scope, meaning, intent or interpretation of this Agreement, and shall not have any legal effect.

**22.7** This Agreement is the entire understanding of the parties and supersedes all prior understandings and documents relating to the subject matter of this Agreement.