



## **Terms and Conditions**

**Please read these Terms and Conditions carefully, as they set out our and your legal rights and obligations in relation to our services (defined further below and in the Proposal).**

**These Terms and Conditions do not apply to consumers and apply to business-to-business transactions only.**

**The Customer's attention is particularly drawn to the provisions of clause 12 (liability).**

### **1. Definitions and interpretation**

1.1 In the Agreement the following definitions shall apply unless otherwise stated:

**"Acceptance Date"** means the date of acceptance or deemed acceptance of the Website by the Customer, pursuant to Clause 3;

**"Acceptance Period"** means the period of ten (10) Business Days beginning on the actual date of delivery of the Website;

**"Affiliate"** means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

**"Agreement"** means the agreement between Inspire and the Customer in relation to the provision of services and deliverables, being these Terms and Conditions and the Proposal, and any amendments to it from time to time;

**"Brand Guidelines"** means the Customer's brand guidelines provided to Inspire from time to time;

**"Business Day"** means a day other than a Saturday, Sunday or public holiday in Scotland;

**"Business Hours"** means between 09:00 and 17:30 GMT on a Business Day;

**"Charges"** means the amounts payable by the Customer to Inspire under or in relation to the Agreement as set out in the Proposal;

**"Confidential Information"** means:

- (a) any information supplied by one party to the other party (whether supplied in writing, orally or otherwise) marked as "confidential", described as "confidential" or reasonably understood to be confidential;
- (b) the terms (but not the existence) of the Agreement;

**"Control"** means the ownership of 50% or more of the shares of any organisation or the legal power to direct or cause the direction of the general management of either an entity (and **"Controlled"** will be construed accordingly);

**"Custom Website"** means a website which requires bespoke and/or customised design input (from Inspire and/or the Customer) and development and shall include online shopping websites;

**"Customer"** means the customer who orders the Services under the Agreement, and as specified in the Proposal;

**"Customer Works"** means the works and materials provided to Inspire by the Customer, or by any third party acting for or on behalf of the Customer, for incorporation into the Website or any SEO Website;

**"Data Protection Laws"** means any data protection legislation from time to time in force in the UK, including but not limited to, the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**") and the Data Protection Act 2018 or any successor legislation;

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

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents or sub-contractors;
- (b) an incompatibility between the Website and any other application, program or software (other than the Customer Works and the Third Party Works).

**"Deliverables"** means the SEO Pages, reports, analyses, statistics, content and other materials required to be delivered by Inspire in accordance with the SEO Services and / or the Digital Marketing Services and as detailed in the Proposal;

**"Delivery Date"** means the date for delivery of the Website specified in the Proposal;

**"Design Elements"** means the visual appearance of the Website (including artwork, photographs, logos, graphics, animations, video works and text comprised in the Website) together with all mark-ups and style sheets comprised in or generated by the Website, but excluding:

- (a) page layouts;
- (b) the Customer Works; and
- (c) the Third Party Works;

**"Digital Marketing Services"** means any digital marketing services detailed in the Proposal, including any SEO Services;

**"Economy Website"** means an off-the-shelf website which does not require customised and/or bespoke design input (from Inspire and/or the Customer) and shall include "one-page websites";

**"Effective Date"** means the date on which the Customer accepts the Proposal;

**"Extended Acceptance Period"** means the period of ten (10) Business Days beginning on the day following the last day of the Remediation Period;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Heightened Cybersecurity Requirements"** means any laws, regulations, codes, guidance from regulatory and advisory bodies (whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to the Customer relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time;

**"Inspire"** means Inspire IT Services Ltd, a limited company incorporated in Scotland (registration number SC346614; VAT No: 936 2486 03) having its registered office at 32 Innewan Gardens, Bankfoot, Perth, PH1 4AL;

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

**"Maintenance and Hosting Services"** means the support, maintenance and hosting services related to the Website, and as further detailed in the Proposal;

**"Pre-Existing Work"** means the works, concepts, items and materials either developed or procured to be developed by Inspire or its personnel at any time for use in relation to Inspire's business or any or all of Inspire's customers generally and not specifically for the provision of the Services or Deliverables to the Customer;

**"Proposal"** means the high-level proposal document(s) issued by Inspire which sets out the Services Inspire will provide to the Customer. Where the Services include Web Development Services such high-level proposal document describes, at a high-level, the features that will be present on the Website;

**"Requirements"** means the detailed requirements document issued by Inspire describing all of the features that will be present on the Website. This is generally created only after the Customer has agreed to go ahead and has paid Inspire the 50% up-front charge. A requirements document is not used for a one-page website project;

**"Remediation Period"** has the meaning given to it at clause 3.4(b);

**"SEO Materials"** means the content provided to Inspire by the Customer from time to time in order for Inspire to generate the SEO Pages and otherwise perform the SEO Services;

**"SEO Pages"** means the web pages worked on by Inspire under the Agreement containing content, links, tagging and other search engine optimisation techniques in order to increase the ranking and prominence of a SEO Website (and/or its web pages) in the result pages of search engines;

**"SEO Services"** means any search engine optimisation services detailed in the Proposal;

**"SEO Specifications"** means the specification for the SEO Pages as set out in the Proposal;

**"SEO Website"** means any website on or in relation to which SEO Services are performed by Inspire as identified in the Proposal (the SEO Website may be, but does not have to be, the Website);

**"Services"** means, as applicable, the Web Development Services and/or Maintenance and Hosting Services and/or any Digital Marketing Services;

**"Software Elements"** means the Website excluding:

- (a) the Design Elements;
- (b) the Customer Works; and
- (c) the Third Party Works;

**"Term"** means the duration of the provision of the Services as detailed in the Proposal;

**"Third Party Works"** means any works and / or materials comprised in the Website or any Deliverable, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Works);

**"Unsuitable Content"** means any material or content which infringes any applicable laws, regulations or third party rights or which contains any material or content that is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing or blasphemous;

**"Web Development Services"** means the services related to the design and development of the Website, and as further detailed in the Proposal;

**"Website"** means the website or web application to be developed by Inspire for the Customer under the Agreement and further to the Web Development Services, and as further detailed within the Website Specification;

**"Website Acceptance Criteria"** has the meaning given to it in Clause 3.3;

**"Website Specification"** means the specification for the Website as set out in the Proposal or the Requirements (where applicable); and

**"Year"** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
  - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
  - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement. References to Clauses are (unless otherwise provided) references to the Clauses of the Agreement.
- 1.4 The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.
- 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 statute or statutory provision is a reference to it as it is in force as at the date of the Agreement.
- 1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.8 Writing or written includes email but not fax.
- 1.9 **"personal data", "controller", "processor", "data subject", "processing", "supervisory authority", "personal data breach", "appropriate technical and organisational measures"**, all have the meanings given to them in the Data Protection Laws.

## **2. Term and forming the Agreement**

- 2.1 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 If there is any conflict or ambiguity between the terms of any Proposal and these Terms and Conditions, a term contained in the Proposal shall have priority over a term contained in these Terms and Conditions. If there is any conflict or ambiguity between these Terms and Conditions and the terms of an invoice issued by Inspire, the terms of an invoice shall have priority over any term contained in these Terms and Conditions.
- 2.3 The Agreement shall commence on the Effective Date and shall continue for the Term unless terminated earlier in accordance with Clause 17. Inspire shall provide the relevant Services to the Customer for the relevant time periods detailed in the Proposal unless provided otherwise under these Terms and Conditions.
- 2.4 Inspire shall be under no obligation to provide any service (including the Services) to the Customer unless and until a Proposal has been provided to the Customer by Inspire and accepted by the Customer.

### **3 Web Development Services**

- 3.1 Inspire will use reasonable endeavours to perform the Web Development Services in accordance with any timetable set out in the Proposal; however, Inspire does not guarantee that timetable will be met (and time of delivery of the Services is not of the essence).
- 3.2 Inspire will use reasonable endeavours to deliver the Website to the Customer for acceptance testing on or before the Delivery Date.
- 3.3 During the Acceptance Period and / or any Extended Acceptance Period, the Customer may carry out acceptance tests on the Website to determine:
  - (a) whether the Website conforms in all material respects with the Website Specification; and
  - (b) whether the Website has any material Defects;(the "**Website Acceptance Criteria**").
- 3.4 Subject to clause 3.6, if the Website does not, in the Customer's reasonable opinion, meet the Acceptance Criteria:
  - (a) the Customer shall send to Inspire a written notice during the Acceptance Period and / or the Extended Acceptance Period (where relevant) setting out in detail the respect(s) in which the Website does not meet the Acceptance Criteria; and
  - (b) Inspire shall have a further remedial period (of twenty (20) Business Days from the date of notification ("**Remediation Period**")) to modify the Website so that it meets the Acceptance Criteria, if and to the extent that Inspire deems such modifications necessary.
- 3.5 The Website shall be deemed to have been accepted by the Customer if:
  - (a) the Customer has given written notice of acceptance;
  - (b) the Customer does not give any notice to Inspire before expiry of the Acceptance Period and / or Extended Acceptance Period; or

- (c) the Customer publishes the Website or uses the Website for any purpose other than development and / or testing.

3.6 If any failure to pass the Acceptance Criteria results from a defect which is caused by an act, failure to act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Inspire has no responsibility ("**Non-Inspire Defect**"), the Website shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Inspire Defect. Inspire shall provide assistance reasonably requested by the Customer in remedying any Non-Inspire Defect by supplying additional services or products. The Customer shall pay Inspire in full for all such additional services and products at Inspire's then current fees and prices.

#### 4 **Maintenance and Hosting Services**

Maintenance and Hosting Services shall be provided in all material respects in accordance with the terms set out in the Proposal.

#### 5 **Digital Marketing Services**

5.1 Digital Marketing Services shall be provided in all material respects in accordance with the terms set out in the Proposal.

5.2 Inspire shall deliver the Deliverables to the Customer in all material respects in accordance with the Proposal.

#### 6 **SEO Services**

6.1 Inspire shall:

- (a) provide the SEO Services;
- (b) develop the SEO Pages in all material respects in accordance with the SEO Specifications;
- (c) comply with the Brand Guidelines when:
  - (i) preparing and providing the Deliverables; and
  - (ii) performing the SEO Services;
- (d) comply with the Customer's information and IT security measures as communicated to Inspire in writing when performing the SEO Services,

all in accordance with the terms of the Agreement and the Proposal.

6.2 The Customer acknowledges and agrees that Inspire does not guarantee first position or consistent top ten positions for any particular keyword, phrase or search term as it is solely at the discretion of the search engines themselves to list a website.

6.3 The Customer acknowledges that Inspire has no control over the policies of search engines with respect to the type of websites and / or content that they accept or the way in which websites are ranked either now or in the future. As a result search engines may:

- (a) stop accepting submissions from Inspire for an indefinite period of time with or without notice; or
- (b) cease to list a website at its discretion, however should a SEO Website not reappear within thirty (30) days of it not being listed then Inspire will re-optimize the applicable



SEO Website based on the current policies of the relevant search engine at a cost to be agreed between the parties,

and Inspire shall not be liable to the Customer for any such actions of search engines.

- 6.4 Inspire is not responsible for changes made to the SEO Website by:
- (a) other parties; or
  - (b) the Customer in choosing to link to or obtain a link from a particular website without prior consultation with Inspire,
- that adversely affect the search engine rankings of the SEO Website.
- 6.5 There shall be no reduction in the fees payable to Inspire under the Agreement due to reduced internet traffic at any time during the provision of the SEO Services.
- 6.6 Inspire shall not be responsible for the Customer overwriting actions Inspire has taken as part of the SEO Services on the SEO Website.
- 6.7 In the period during which Inspire provides the SEO Services Inspire shall promptly report to the Customer any material issues with the performance of the SEO Services and/or SEO Websites. Upon the reasonable request of the Customer, and subject to an agreement on costs between the parties, Inspire may agree to correct any such material issues with the performance of the SEO Services and / or SEO Websites.
- 6.8 Inspire shall include in the SEO Pages only SEO Materials and any other content that it has developed pursuant to the SEO Specifications.
- 6.9 The Customer warrants, represents and undertakes that all content in the SEO Materials will not contain Unsuitable Content. The Customer shall notify Inspire immediately if it becomes aware that any content in the SEO Materials may be Unsuitable Content.
- 6.10 The Customer shall indemnify Inspire from and against all losses, damages, costs, expenses (including reasonable professional advisers' costs and disbursements, reasonable legal costs and disbursements) incurred by Inspire arising as a result of any action or claim that the SEO Materials constitute Unsuitable Content.

## **7 Customer Obligations**

- 7.1 The Customer acknowledges that Inspire'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 any information and data the Customer provides to Inspire. Accordingly, the Customer shall provide Inspire with:
- (a) such co-operation as is required by Inspire to enable the performance by Inspire of its obligations under the Agreement; and
  - (b) all information and documents required by Inspire in connection with the provision of the Services.
- 7.2 The Customer will be responsible for procuring any third party co-operation reasonably required by Inspire to enable Inspire to fulfil its obligations under the Agreement.
- 7.3 The Customer shall be responsible for the accuracy and completeness of the Customer Works.
- 7.4 Without prejudice to the foregoing provisions of this clause 7, for the purposes of Inspire providing the SEO Services, the Customer agrees to provide the following:

- (a) administrative or back-end access to the SEO Website for analysis of its content and structure;
- (b) permission for Inspire to make changes to the SEO Website for the purpose of optimisation;
- (c) permission for Inspire to communicate directly with any applicable third parties connected with the SEO Website (for example, the Customer's web designer) in order to provide the SEO Services;
- (d) access to existing traffic statistics for the SEO Website in order for analysis and tracking purposes; and
- (e) where the SEO Website is lacking in textual content, the Customer will provide additional text content in electronic format for the purpose of creating additional or richer web pages.

## **8 Website Content**

- 8.1 The Customer warrants to Inspire that the Customer Works do not contain any Unsuitable Content.
- 8.2 The Customer shall indemnify and keep indemnified Inspire against all damages, losses and expenses (including legal expenses) arising as a result of any action or claim that the Customer Works constitute Unsuitable Content, or any legal proceedings relating to such a claim.
- 8.3 The Customer acknowledges that Inspire has no control over any content placed on the Website or SEO Website by visitors to the Website or SEO Website and does not purport to monitor the content of the Website or SEO Website. Inspire reserves the right to remove content from the Website or SEO Website where it reasonably suspects such content is Unsuitable Content.
- 8.4 Inspire may include a statement together with a link to Inspire's website on each page of the Website whereby Inspire is accredited as the designer, developer and/or host provider of the Website. The Customer shall retain any such statements and links inserted by Inspire to the Website in any adapted version of the Website, and the Customer shall (and shall only) remove any such representations and links from the Website on Inspire's request.
- 8.5 Inspire may carry out work on the Website additional to that agreed in the Proposal and will do so at Inspire's hourly rates in place from time to time.

## **9 Charges and Payment**

- 9.1 The agreed Charges for the relevant Services are detailed in the Proposal. All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 9.2 The Customer shall pay all costs (at Inspire's then prevailing rates) and expenses incurred by Inspire for work carried out by Inspire which is outwith the scope of the Services as detailed in the Proposal.
- 9.3 The Customer shall reimburse any expenses incurred by Inspire where such expenses are incurred wholly and exclusively for the purpose of providing on-site Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 9.4 The Customer shall pay each invoice submitted by Inspire within fifteen (15) days of the date of the relevant invoice (and time for payment shall be of the essence of the Agreement)



and in accordance with any payment terms stipulated on the relevant invoice and / or the Proposal. Payment shall be made by the Customer in full and cleared funds to a bank account nominated in writing by Inspire from time to time.

- 9.5 If the Customer does not pay any amount properly due to Inspire under or in connection with the Agreement, Inspire may, without limiting any other remedies available to Inspire charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of Santander from time to time (which interest will accrue daily until the date of actual payment and will be compounded quarterly), and the Customer shall pay the same.

## **10 Intellectual Property Rights**

### **Websites**

- 10.1 If the Website is a Custom Website, then from the date payment of all invoices due under the Agreement is received by Inspire and upon acceptance of the Website by the Customer, Inspire hereby assigns to the Customer all Intellectual Property Rights in the Design Elements. This clause 10.1 does not apply to Economy Websites.
- 10.2 If the Website is an Economy Website, then Inspire grants to the Customer a non-exclusive, non-sub-licensable, fully revocable license to use the Design Elements for the purposes of the Customer's day-to-day business or as otherwise specified in the Proposal and the Customer may only sub-license the rights licensed under this Clause 10.2 for the limited purposes, and subject to the express restrictions, specified in this Clause 10.2.
- 10.3 All Intellectual Property Rights in the Software Elements will, as between the parties, be the property of Inspire and, from the date of acceptance of the Website by the Customer, Inspire grants to the Customer a non-exclusive worldwide licence to use the Software Elements for the purpose of operating the Website, subject always to the other terms of the Agreement, and providing the Customer must not:
- (a) sell, resell, rent, lease, supply, distribute or redistribute the Software Elements;
  - (b) use the Software Elements in connection with any website, web application, script, computer program or software (other than the Website); or
  - (c) alter or adapt or edit the Software Elements,

and the Customer may only sub-license the rights licensed under this Clause for the limited purposes, and subject to the express restrictions, specified in this Clause.

### **SEO Services and Digital Marketing Services**

- 10.4 Subject to clause 10.5, all Intellectual Property Rights in the Deliverables shall vest in and belong to the Customer absolutely, and Inspire hereby assigns all such Intellectual Property Rights in the Deliverables to the Customer.
- 10.5 To the extent that any Pre-Existing Work is incorporated into the Deliverables it shall remain the property of Inspire. Inspire hereby grants (and if the Pre-Existing Work shall include any third-party materials, procure the grant from these third parties) to the Customer a non-exclusive, transferable, worldwide licence to use such Pre-Existing Work as part of the Deliverables for the purposes of receiving the benefit of the relevant Services.
- 10.6 The Customer grants to Inspire a limited, non-exclusive, non-transferable, revocable and worldwide licence to access and use the:
- (a) Websites and SEO Websites;
  - (b) Customer Works;

- (c) SEO Pages; and
- (d) name, logo, company name and trademark of the Customer,

to provide the Services to the Customer in accordance with the Agreement and the Branding Guidelines during the Term.

### **General**

10.7 The Third Party Works will be:

- (a) supplied in accordance with the relevant licensor's standard terms;
- (b) supplied on licence terms notified by Inspire to the Customer where the Customer has requested inclusion of the Third Party Works; and/or
- (c) sub-licensed by Inspire to the Customer on terms notified by Inspire to the Customer,

and any licence fees for Third Party Works are included in the Charges (unless otherwise stated in the Proposal and / or unless the parties otherwise agree in writing).

10.8 Notwithstanding any other provision of the Agreement, the assignments and licences granted by Inspire under the Agreement are subject to the payment by the Customer of all amounts owing to Inspire under the Agreement in full and on time. In the event that the Customer owes any amount to Inspire under the Agreement and fails to pay that amount to Inspire within fourteen (14) days of receiving a notice:

- (a) requiring it to do so; and
- (b) specifying that the assignments will revert and the licences will terminate if the amount remains unpaid,

then Inspire may immediately revert the assignments and terminate the licences granted by Inspire under the Agreement by giving written notice of reversion and termination to the Customer.

10.9 Subject to Clause 10.8, upon and following the termination of the Agreement, any licence granted by Inspire to the Customer will continue notwithstanding termination, and this Clause 10 will continue to apply.

10.10 Where Clauses 10.1 and 10.4 apply and without prejudice to Clauses 10.2 and 10.5, Inspire waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Website arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.

## **11 Warranties**

11.1 The Customer warrants to Inspire that it has full power and authority to enter into and perform its obligations under the Agreement.

11.2 Inspire warrants to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;
- (b) that it will perform its obligations under the Agreement with reasonable care and skill;

(c) in so far as it is aware, use of the Website (excluding the Customer Works) by the Customer in accordance with the terms of the Agreement will not infringe the Intellectual Property Rights of any third party; and

(d) that the Website will continue to operate without any material Defects for a period of ninety (90) days from the date of acceptance of the Website (and if the Website does not so operate, Inspire will, for no additional charge, carry out any reasonable works in order to ensure that the Website operates without any material Defects during this period).

- 11.3 The warranty set out in Clause 11.2 shall not apply to the extent that any Defects are caused by the Customer Works and / or 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 Inspire has no responsibility.
- 11.4 The Customer acknowledges that Inspire has designed the Website to work with the web browser technology specified in the Proposal, and Inspire does not warrant that the Website will work with any other web browser technology.
- 11.5 The Customer further acknowledges that Inspire does not purport to provide any legal advice under the Agreement or in relation to the Website and Inspire does not warrant that the Website will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.
- 11.6 Inspire does not warrant that the Customer's use of the Services or the Website will be uninterrupted or error-free or that the Services or the Website will comply with any Heightened Cybersecurity Requirements.
- 11.7 Inspire shall not be liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from act or omission of the Customer, or by one of the Customer's sub-contractors or agents.
- 11.8 The Agreement sets out the full extent of Inspire's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded

## **12 Liability**

- 12.1 Nothing in the Agreement will exclude or limit the liability of either party for:
- (a) death or personal injury caused by that party's negligence;
  - (b) fraud or fraudulent misrepresentation on the part of that party; or
  - (c) any other liability which may not be excluded or limited under applicable law.
- 12.2 Subject to Clause 12.1, each party's liability to the other party under or in connection with the Agreement or any collateral contract, whether in contract or delict (including negligence), will be limited as follows:
- (a) neither party will be liable for any:
    - (i) loss of profits, income or anticipated savings;
    - (ii) loss or corruption of any data, database or software;
    - (iii) reputational damage or damage to goodwill;

- (iv) loss of any commercial opportunity; or
  - (v) indirect, special or consequential loss or damage;
  - (b) neither party will be liable for any losses arising out of a Force Majeure Event; and
  - (c) each party's liability in relation to any event or series of related events will in no circumstances exceed £250,000.
- 12.3 Subject to Clause 12.1, Inspire has no liability to the Customer or any third party for any advice or services provided in relation to the Digital Scotland voucher scheme.

### **13 Data protection**

- 13.1 The parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the controller and Inspire is the processor for any personal data hosted and/or processed via the Website or SEO Website.
- 13.2 The Proposal sets out the scope, nature and purpose of processing by Inspire, the duration of the processing and the types of personal data and categories of data subject.
- 13.3 The Customer warrants that it will comply with all applicable requirements of the Data Protection Laws, and without prejudice to the generality of the foregoing, it has the legal right to disclose all personal data that it does in fact disclose to Inspire under the Agreement.
- 13.4 In relation to any personal data processed by it as a processor on the Customer's behalf, Inspire agrees to:
- (a) process that personal data only on the documented instructions of the Customer unless Inspire is required by applicable law to otherwise process that personal data, in which case Inspire shall inform the Customer of this legal requirement before any processing unless the legal requirement prohibits this. The Customer's documented instructions are provided in the Agreement, and in particular Inspire is to process the personal data to provide the Services;
  - (b) ensure that personnel of Inspire involved in providing the Hosting and Maintenance Services, have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
  - (c) ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - (d) taking into account the nature of the processing, assist the Customer, at the Customer's cost, by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of the Customer's obligations to respond to requests by data subjects to exercise their rights under Chapter III of the GDPR;
  - (e) assist the Customer, at the Customer's cost, in ensuring compliance with the Customer's obligations regarding security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities, taking into account the nature of the processing and the information available to Inspire;

- (f) at the written direction of the Customer, delete or return personal data to the Customer on termination of the Agreement unless required by applicable law to continue to hold and / or store the personal data; and
  - (g) make available to the Customer information as reasonably necessary to demonstrate compliance with the obligations outlined in this clause 13;
- 13.5 The Customer acknowledges that Inspire may from time to time engage third parties as sub-processors and the Customer authorises the use of such sub-processors in connection with the Agreement and agrees to the sharing of any personal data processed by Inspire under this Agreement with such sub-processors. Inspire shall inform the Customer of any intended changes to its sub-processors. Inspire confirms that it will enter into a written agreement with such sub-processors substantially on that third party's standard terms of business. As between the Customer and Inspire, Inspire shall remain liable for all acts or omissions of any sub-processor appointed by it pursuant to this Clause 13.5.
- 13.6 Inspire may, at any time on not less than thirty (30) days' notice, revise this Clause 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).
- 13.7 If, during the Term, the United Kingdom ceases to be a Member State of the European Union, the parties hereby undertake to discuss and agree in good faith what procedures and processes require to be put into place to ensure that personal data is processed and shared in accordance with the standards and laws to which the Parties are each subjected.
- 13.8 The Customer agrees to fully indemnify and keep indemnified Inspire against all costs, claims, damages or expenses incurred by Inspire or for which Inspire may become liable due to any failure by the Customer or its officers, employees or agents to comply with the Data Protection Laws.

#### **14 Confidentiality and publicity**

- 14.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 14. (For the purposes of this Clause 14, the terms of the Agreement constitute the Confidential Information of each party.)
- 14.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 14.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 14.4 These obligations of confidentiality will not apply to Confidential Information that:
- (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
  - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
  - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body or a stock exchange.

- 14.5 Neither party will make any public disclosure relating to the subject matter of the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

## **15 Suspension of Services**

- 15.1 Inspire reserves the right to suspend the Website if usage exceeds 1GB of bandwidth per month, and / or any other terms detailed in the Proposal.
- 15.2 Inspire reserves the right to suspend the Customer's e-mail account(s) if the usage of the accounts is considered, in Inspire's sole opinion, to be an abuse.
- 15.3 Inspire reserves the right to suspend the Services if the Customer fails to make any payment due to Inspire under the Agreement within fourteen (14) days of the date on which Inspire issues notice to the Customer requesting payment.
- 15.4 Suspension will not affect the Customers obligations under Clause 9 of the Agreement to pay all owed Charges to Inspire.

## **16 Termination**

- 16.1 Inspire may terminate the Agreement at any time by giving at least fourteen (14) days' written notice to the Customer.
- 16.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits a material breach of any term of the Agreement, and:
    - (i) the breach is not remediable; or
    - (ii) the breach is remediable, but other party fails to remedy the breach within thirty (30) days of receipt of a written notice requiring it to do so; or
  - (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 16.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company)

reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement).

## **17 Effects of Termination**

- 17.1 Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 8, 9, 10, 11, 12, 13.8, 14, 17, 18 and 19.
- 17.2 Termination of the Agreement will not affect either party's accrued rights (including Inspire's accrued rights invoice for and to be paid the Charges) as at the date of termination.
- 17.3 Upon payment of all Charges due under the Agreement and if the Agreement is terminated under Clause 16.1, or by the Customer under Clause 16.2 or 16.3 (but not in any other case):
- (a) Inspire will promptly provide to the Customer an electronic copy of the Website; and
  - (b) Inspire will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, at the Customer's expense.
- 17.4 The Customer will not be entitled to any refund of Charges on expiry or termination of the Agreement, and will not be released from any obligation to pay Charges to Inspire. Upon expiry or termination of this Agreement, the Customer shall immediately pay to Inspire all of Inspire's outstanding unpaid invoices and interest and, in respect of Charges due, but for which no invoice has been submitted, Inspire shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 17.5 Upon expiry or termination of this Agreement and payment of all Charges due under the Agreement, Inspire will transfer the Customer's domain name to the Customer or another web development company.

## **18 Notice**

- 18.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by post, fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address given below (or as otherwise stated within the Proposal).

**Address:**

Inspire IT Services Ltd  
Inspire House  
Lawgrove Place  
Perth  
Scotland  
PH1 3XQ

**Email:** [contracts@inspirewebdevelopment.com](mailto:contracts@inspirewebdevelopment.com)

A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;
- (b) where the notice sent by post, 48 hours after posting; and

- (c) where the notice sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

## 19 General

- 19.1 **Variation.** Inspire may vary these Terms and Conditions from time to time upon written notice to the Customer. No variation of the Agreement by the Customer shall be effective unless it is agreed in writing and signed by Inspire (or its authorised representative).
- 19.2 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.3 **Severance.** If any provision or part-provision of the Agreement 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 the Agreement. If any provision or part-provision of the Agreement is deemed deleted 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.
- 19.4 **No partnership or Agency.** Nothing in the Agreement will constitute a partnership, joint venture, agency relationship or contract of employment between the parties.
- 19.5 **Assignment.** Inspire may assign any or all of its rights and obligations under the Agreement without the Customer's prior consent to any of its Affiliates or any successor to all or substantial part of the business of Inspire from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party shall without the prior written consent of the other party assign, transfer, charge, licence or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 19.6 **Subcontract.** Inspire may subcontract any or all of its rights and obligations under the Agreement to any of its Affiliate and / or a third party.
- 19.7 **Non-solicitation.** Neither party shall, without the other party's prior written consent, either during the Term or within six (6) months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the other party who has been involved in the performance of the Agreement.
- 19.8 **Third party rights.** The Agreement is made for the benefit of the parties, and, unless expressly stated otherwise, is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate or vary the Agreement are not subject to the consent of any third party.
- 19.9 **Entire Agreement.** The Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of the Agreement. Subject to Clause 10.1, each party acknowledges that no representations or promises not expressly contained in the Agreement have been made by or on behalf of the other party. The Customer agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things, which are necessary to enable Inspire to exercise its rights and fulfil its obligations under the Agreement.



- 19.10 **Force majeure.** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- 19.11 **Governing law and jurisdiction.** The Agreement will be governed by and construed in accordance with the laws of Scotland; and the courts of Scotland shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.