

## Plug and Play Terms and Conditions of Business

These terms and conditions shall apply to the supply of all services by Plug and Play. By placing an order for services or entering into a Work Agreement with Plug and Play the Client agrees to be bound by these terms and conditions. Plug and Play may amend these terms and conditions from time to time and the most current version can be viewed at [www.plugandplaydesign.co.uk/terms](http://www.plugandplaydesign.co.uk/terms).

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions the following words shall have the following meanings:

<b>Additional Services</b>	any services provided by Plug and Play to the Client in addition to the Services and which are not specified in the Proposal or Work Agreement (if used);
<b>Agreement</b>	these terms and conditions, the Proposal and the Work Agreement (if used);
<b>Client</b>	the person who places the order for the Services with the Developer;
<b>Client Content</b>	the information, data and other content provided by the Client to Plug and Play for incorporation in the Site (including all copy, graphic images, registered company logos, names and trademarks);
<b>Contract</b>	the contract for the supply of the Services formed in accordance with clause 2.6;
<b>Error</b>	any material failure of the Site or Services to comply with the Proposal and/or Work Agreement;
<b>Hosting Services</b>	the hosting of the Site on a Third Party ISPs server as described in clause 10;
<b>IPR</b>	any and all registered and unregistered copyright patents, design rights, database and compilation rights, Marks, rights in goodwill or to sue for passing off, database rights, rights in computer software, rights in confidential information (including know-how and trade secrets), business and domain names and other intellectual property rights, howsoever arising and in whatever media, and any applications for their protection or registration and all renewals and extensions anywhere in the world;
<b>Fees</b>	the fees for the Services as set out in the Proposal and/or Work Agreement and including all additional sums and charges which may be due to the Developer under this Agreement;
<b>Marks</b>	any and all names, brands, logos, trademarks, service marks, trade names and domain names;
<b>Overrun</b>	work on the Services which for any reason exceeds the estimated timescales and/or any other assumptions set out in the Proposal or Work Agreement;

<b>Plug and Play</b>	Plug and Play Design Limited or one of its licensed partners as notified to the Client;
<b>Project Services</b>	the website design and development services detailed in the Proposal or Work Agreement;
<b>Proposal</b>	a document prepared by Plug and Play for the Client which details the Services to be provided by Plug and Play;
<b>Retained Services</b>	Hosting Services, digital marketing services, support and maintenance services and any other services as listed in the Proposal or Work Agreement;
<b>Services</b>	the Project Services and/or Retained Services agreed to be provided by the Developer and detailed in the Proposal or Work Agreement;
<b>Site</b>	the website to be designed by Plug and Play in accordance with the Agreement ;
<b>Third Party ISP(s)</b>	the third party internet service providers used by Plug and Play to provide the Hosting Services;
<b>Work Agreement</b>	an agreement between Plug and Play and the Client concerning the Services.

- 1.2 The headings in these terms and conditions are for ease of reference only and shall not in any way affect their construction or interpretation.
- 1.3 Words denoting the singular include the plural and vice versa; words denoting any one gender include all genders and vice versa, and reference to a person shall include an individual, partnership, body corporate and unincorporated association.
- 1.4 References to any party shall include its personal representatives, lawful successor in title and permitted assigns.
- 1.5 The words and phrases “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

## 2 PROPOSALS AND WORK AGREEMENTS

- 2.1 Subject to clause 2.15, on receipt of a request for Services from the Client, Plug and Play shall draw up a Proposal for the Services and shall deliver this to the Client for approval.
- 2.2 If the parties have agreed to enter into a Work Agreement, Plug and Play shall, in addition to preparation of the Proposal, prepare a Work Agreement and shall deliver the same to the Client for approval.
- 2.3 The Client shall provide Plug and Play with all the information which Plug and Play may reasonably require in order to prepare the Proposal and the Work Agreement (if used) and accepts that Plug and Play is not liable for any errors, inaccuracies or omissions in or from the Proposal and/or Work Agreement which result from the Client’s failure to provide or delay in providing the necessary information.
- 2.4 The Client shall be entitled to reject a Proposal and/or Work Agreement or request amendments to a Proposal and/or Work Agreement up until the date on which it accepts such Proposal and/or Work Agreement.

- 2.5 If the Client wishes to proceed, it must accept the Proposal and provide written confirmation of acceptance to Plug and Play in writing or by email and if a Work Agreement is to be used, the Client must sign the Work Agreement and return a signed copy to Plug and Play.
- 2.6 Once the Client has accepted the Proposal and/or Work Agreement under clause 2.5 (and subject to Plug and Play also signing the Work Agreement (if used)) a contract shall be formed for the provision of the Services which shall comprise these terms and conditions or, if different, the latest version of these terms and conditions available to view at [www.plugandplaydesign.co.uk/terms](http://www.plugandplaydesign.co.uk/terms). Plug and Play shall supply, and the Client shall purchase the Services in accordance with the Contract, and the terms of the Contract shall apply to the exclusion of any other terms and conditions of the Client.
- 2.7 Plug and Play may amend these terms and conditions from time to time and the latest version will be that posted on the website at [www.plugandplaydesign.co.uk/terms](http://www.plugandplaydesign.co.uk/terms).
- 2.8 Whenever the Client places an order for Additional Services the Client shall be deemed to have accepted the latest version of these terms and conditions current at the date of that order and which shall be incorporated into and form part of the contract formed once that order has been accepted by Plug and Play. Acceptance of any such order from the Client shall occur either when Plug and Play confirms acceptance to the Client in writing or email, or if sooner, the commencement of the provision of the Services ordered by Plug and Play.
- 2.9 Except as set out in this clause no variation of these terms and conditions or the Agreement shall be effective unless it is made in writing and signed by both parties.
- 2.10 Any typographical, clerical or other error or omission in the Agreement, any sales literature, quotation, the Proposal, price list, acceptance of offer, invoice or other document or information or (if applicable) the Work Agreement issued by Plug and Play shall be subject to correction without any liability on the part of Plug and Play.
- 2.11 If the Client wishes to amend the Proposal or Work Agreement at any time following its acceptance of the Proposal, it shall notify Plug and Play of the proposed amendments. Plug and Play will use reasonable endeavours to accommodate the Client's revised requirements but the Client acknowledges and this may result in a change in any estimate of the Fees and turnaround times which it has been given by Plug and Play. Plug and Play shall notify the Client of any revision to the Fees and shall not be obliged to proceed with any amendments to the Proposal or Work Agreement unless the Client agrees to accept the revised Fees.
- 2.12 If Plug and Play determines, in its sole discretion, that it cannot accommodate a Client's proposed changes to the Proposal or Work Agreement, it reserves the right to refuse the Client's request.
- 2.13 Any estimate of the Fees set out in the Proposal or Work Agreement is only an estimate of the likely cost and may be subject to change.
- 2.14 Plug and Play shall not commence the Services until the Client has given its written acceptance of the Proposal and where a Work Agreement is to be used, has signed the Work Agreement and paid any deposit that may be due.
- 2.15 Plug and Play reserves the right to decline a request for Services for any reason and at any time until such date as the Proposal is approved or, where a Work Agreement is to be used, the Work Agreement is signed and accepted by the Client.

### 3 DEVELOPMENT AND ACCEPTANCE

- 3.1 Subject to the payment of the Fees and the provision of Client Content, Plug and Play agrees to supply the Services in accordance with the Agreement.
- 3.2 At various stages as detailed in the Proposal or Work Agreement Plug and Play shall notify the Client when the Site or any agreed part of it is available for review and acceptance by the Client. As soon as reasonably practicable and in any event within 28 days, of being notified by Plug and Play, the Client shall notify Plug and Play of any Errors in the Site (or part of it). If the Client fails to notify Plug and Play within the 28 day period, unless otherwise agreed, the Client shall be deemed to have accepted the Site or such part of it that has been submitted for approval.
- 3.3 If the Client notifies Plug and Play of any Errors, Plug and Play shall endeavour to correct such Errors and the corrected version of the Site or such part of it that contained the Error shall again be submitted for approval and acceptance under clause 3.2 which shall apply. This process shall continue until the Client confirms its approval of the Site or work required provided always that the changes notified by the Client are within the scope of work detailed in the Proposal or Work Agreement.
- 3.4 Where however there are no Errors but Client notifies Plug and Play of additional changes or modifications that it requires to be made to the Site or the work which has been submitted for approval under clause 3.2 and such changes or modifications are outside the scope of work detailed in the Proposal or Work Agreement then Plug and Play shall be entitled to make an additional charge for such work at its then current rates which it shall notify to the Client. Where the Client is not prepared to pay the additional charges then Plug and Play is under no obligation to perform the additional changes or modifications requested by the Client and shall not be in breach of the Agreement for failing to do so.
- 3.5 The Client acknowledges that requests for Additional Services may impact any estimated delivery dates and Plug and Play is entitled to adjust any estimated delivery dates further to accommodate the Client's requests.
- 3.6 Where Plug and Play is unable to correct any Errors notified by the Client it shall refund to the Client any monies already paid by the Client to Plug and Play less the cost of any work already done by Plug and Play in performing the Services and which has been accepted by the Client under clause 3.2. Where Plug and Play makes a refund to the Client in accordance with this clause 3.6 it shall have no further liability to the Client in respect of such Errors.
- 3.7 If any Errors result from a defect which is caused by an act or omission of the Client, and through no fault of Plug and Play then the work submitted for approval or the Site (if applicable) shall be deemed to have been accepted for the purposes of clause 3.2. Plug and Play shall provide assistance reasonably requested by the Client in remedying any such defect by supplying additional services or products but reserves the right to charge the Client for such additional services or products at its then current prices and fees and which the Client shall pay. Where the Client is not prepared to pay then Plug and Play is under no obligation to provide further assistance.
- 3.8 Any dates and times for performance of the Services by Plug and Play as set out in the Proposal, Work Agreement or in any other document or discussion between the parties are estimates only and time shall not be of the essence in respect of these. Plug and Play shall not be liable for any loss, damage, cost or expense caused directly or indirectly by any delays in performance of the Services.

- 3.9 The Client acknowledges that Plug and Play shall allocate time and resources to the Services on the basis of the dates and times for performance set out in the Proposal or Work Agreement. The Client accepts that its failure to promptly provide information, instructions or otherwise respond fully to communications from Plug and Play will mean that the allocated resources are no longer available and will result in the Services having to be rescheduled which could cause significant delays to the Services and such delays may be for a longer period than the period for which the Client delayed in providing the information.
- 3.10 On completion of the Site, Plug and Play shall notify the Client and any Fees not already paid for the Services shall become payable (subject to any alternative arrangements agreed in the Work Agreement).
- 3.11 On payment of the Fees in full, Plug and Play shall grant the Client the rights to use the Site as set out in clause 8.2.

#### 4 **CLIENT OBLIGATIONS**

- 4.1 The Client agrees:
- 4.1.1 that the Agreement does not include the provision of equipment, telecommunications or other services necessary to host or access the Site unless Plug and Play has agreed in writing to provide Hosting Services and the Client is responsible for providing and maintaining suitable equipment, telecommunications and support services to facilitate access to the Site;
  - 4.1.2 to fully cooperate with Plug and Play in the provision of the Services and any Additional Services;
  - 4.1.3 to keep all passwords provided by Plug and Play which facilitates access to the Site and its configuration secret at all times;
  - 4.1.4 not interfere or attempt to interfere with the proper working of the Site and in particular shall not attempt to circumvent security, tamper with, hack into, or otherwise disrupt any computer system, server, website, router or any other internet connected device of Plug and Play;
  - 4.1.5 pay the Fees for the Services and any other sums due to Plug and Play in accordance with the Agreement;
  - 4.1.6 only use the Site subject to the terms and conditions of the licence granted to it by Plug and Play pursuant to clause 8.2 and any applicable laws and regulations.
- 4.2 The Client acknowledges that Plug and Play's ability to provide the Services and any Additional Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide), as well as the accuracy and completeness of the Client Content and other information provided by the Client. Therefore the Client agrees to provide complete and accurate Client Content and any other information that may be required for the Site.
- 4.3 Where the Client fails to provide the Client Content and/or other required information or materials or to reply to any request for information from Plug and Play or delays in doing so Plug and Play shall not be liable for any delay or failure on its part to perform the Services as a result and reserves the right to:
- 4.3.1 cease providing the Services and any Additional Services and charge for the work completed to date and any wasted expenditure incurred by Plug and Play as a result of

- the unexpected delay to the work including but not limited to the cost of unused time slots pre-allocated to the Services and Additional Services; or
- 4.3.2 change the Proposal to account for the lack of information in which case any resulting change to the Fees shall be borne by the Client.

## 5 **SITE CONTENT**

- 5.1 The Client shall be responsible for any Client Content it submits to Plug and Play for inclusion on the Site and shall obtain all necessary permissions and authorities in respect of any Client Content before submitting such materials to Plug and Play.
- 5.2 Plug and Play reserves the right to refuse to handle in any way, any Client Content which may be deemed offensive, illegal or in any way controversial.
- 5.3 Plug and Play reserves the right to remove any content from the Site where it reasonably suspects such content infringes any applicable laws, regulations or third party rights (such as material which is offensive, defamatory or in breach of any third party IPRs).
- 5.4 The Client acknowledges that Plug and Play has no control over any content placed on the Site by visitors to the Site and does not purport to monitor or moderate the content of the Site.
- 5.5 The Client shall indemnify and hold harmless Plug and Play at all times from and against all claims, demands, costs (including legal costs on a full indemnity basis) expenses, losses and liabilities any costs and liabilities incurred by Plug and Play as a result of Plug and Play's use of the Client Content including any third party claim arising out of the Client Content.

## 6 **PAYMENT**

- 6.1 Prior to commencement of the Services, Plug and Play may require the Client to pay a non-refundable deposit for the Services.
- 6.2 The Fees for the Services shall either be specified in the Proposal or the Work Agreement or where none are specified shall be calculated on a time and materials basis at Plug and Play's current rates which may be adjusted or may vary from time to time. In either case, Plug and Play shall use specialist software to keep timesheets of all work undertaken for the Client and such timesheets shall be conclusive and binding on both parties.
- 6.3 The Client acknowledges and agrees that:
- 6.3.1 all Fees quoted are estimates only, never fixed fees due to the nature of the work involved. Estimated Fees are not binding on Plug and Play and shall be kept under review and in the event of an Overrun or anticipated Overrun shall be adjusted on notice to the Client;
- 6.3.2 Fees have been calculated on the basis of the initial understanding of the scope of the work detailed in the Proposal or Work Agreement and that the scope of work may change as the Client's understanding of its own requirements changes.
- 6.4 Plug and Play reserves the right to increase the Fee in the event of an Overrun or where the Client requires further amendments to Site which are not specified in the Proposal or requires Additional Services or where the Client delays in providing any information required by Plug and Play or fails to perform any of the Client's obligations under the Agreement. In such circumstances Plug and Play shall notify the Client of the additional charges to be incurred and which shall be added to the Fees due.

- 6.5 Any Overruns or Additional Services (including but not limited to any renewal of the Hosting Services) shall be charged for by Plug and Play on a time and materials basis at Plug and Play's current rates and on a monthly basis unless otherwise specified by Plug and Play.
- 6.6 Plug and Play shall invoice the Client in accordance with and to include any stage payments specified in the Proposal or Work Agreement. Unless agreed otherwise in the Proposal or Work Agreement, where stage payments are agreed the final payment shall be due on completion of the Site.
- 6.7 The Client shall pay the Fees and any other charges due to Plug and Play on delivery of Plug and Play's invoice for the same.
- 6.8 All Fees and other charges are exclusive of Value Added Tax and any similar taxes. All such taxes are payable by the Client.
- 6.9 If the Client fails to make any payment when due to Plug and Play whether under the Agreement or any other agreement between the parties, then without affecting any other rights which Plug and Play may have it shall be entitled to:
- 6.9.1 suspend performance of all or any of the Services and/or Additional Services (including Hosting Services), including removing the Site until paid; and /or
  - 6.9.2 to be paid compensation and charge interest on the overdue amount at the statutory rate and otherwise in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), or, if higher or if no such rate exists, at a rate of 8.5% above the sterling base rate from time to time of Barclays Bank, which shall accrue from day to day both before and after judgement, from the invoice date until payment is made in full and shall be compounded quarterly; and/or
  - 6.9.3 retain any deposit already paid by the Client.
- 6.10 Pending payment to Plug and Play in full of all sums due from the Client, Plug and Play will reserve possession of any documents and title to any aspect of the Services and Site that would otherwise be the property of the Client.
- 6.11 The time of payment of the Fees (or any part thereof) and any charges for Overruns or Additional Services shall be of the essence.
- 6.12 If Plug and Play becomes entitled to terminate the Agreement for any reason, all and any sums then due to it will immediately become payable in full by the Client.
- 6.13 The Client shall pay all amounts due to Plug and Play in full without any set-off, abatement, cross claim, deduction or withholding of any kind other than as required by law.

## 7 **WARRANTIES**

- 7.1 Each party warrants to the other:
- 7.1.1 that it has the full right, power and authority to enter into and perform the Agreement and has not entered into any arrangement which in any way conflicts with the Agreement or inhibits, restricts or impairs its ability to perform its obligations under the Agreement .
  - 7.1.2 that it has sufficient rights (including IPR) in the items to be delivered under the Agreement to enable the rights set out in the Agreement to be enjoyed and the various obligations to be fulfilled and that it has obtained and will maintain and renew, as appropriate, all necessary licences, authorisations and consents which are necessary for the full implementation of the Agreement .

- 7.2 The Client warrants that the Client Content is adequate to enable Plug and Play to carry out its obligations under the Agreement and acknowledges that unless expressly provided for in the Proposal Plug and Play accepts no responsibility for and will not incur any liability in respect of the Client Content.
- 7.3 Where the Client has not instructed Plug and Play to provide Hosting Services, the Client warrants that it has sufficient resources, expertise and financial resources to host the Site in the manner recommended by Plug and Play.
- 7.4 Plug and Play makes no warranty as to the quality, stability or reliability of, nor does it accept any liability for, any third party software, plug ins, content management systems (CMS)s, application programming interfaces (API)s, or other third party provided code (whether open source or otherwise) on the Site for any purpose whether provided by Plug and Play or otherwise. The Client acknowledges that Plug and Play is unable to control changes or other modifications that may be made to third party software by the relevant third party provider after the date upon which it is installed on the Site and therefore this is provided at the Client's own risk.

## 8 IPR AND LICENCES

- 8.1 The copyright and all other IPRs in any methodologies and technologies provided by Plug and Play for the Site and Services shall remain vested in Plug and Play or its licensors.
- 8.2 Subject to compliance by the Client with the Agreement and payment of the Fees and charges for any Additional Services, Plug and Play hereby grants the Client a royalty-free, worldwide, non-exclusive perpetual licence to use the Site in its business.
- 8.3 Plug and Play waives any moral rights as defined in sections 77 to 83 of the Copyright, Designs and Patents Act 1988 subsisting in any copyright work created for the Client under the Agreement .
- 8.4 Nothing in the Agreement shall be taken to prevent Plug and Play from using any expertise acquired or developed during the performance of the Agreement in the provision of services for other companies or on its own behalf.
- 8.5 None of the rights or licences granted by Plug and Play to the Client are sub licensable by the Client.
- 8.6 No licence or other right is given to access, copy or make any use of the source code to the Site. The Client shall not, and shall not permit any third party to, reverse engineer, translate, disassemble, hack, decompile, modify, prepare derivative works based on, or copy or exploit the Site, except to the extent expressly permitted by applicable law. Breach of this clause shall constitute a material breach of the Agreement .
- 8.7 Nothing in the Agreement shall be taken to prevent Plug and Play from using any expertise acquired or developed during the performance of the Agreement in the provision of services for other companies or on its own behalf.

## 9 SUPPORT AND MAINTENANCE

Unless specifically agreed in a Proposal or Work Agreement, Plug and Play shall not provide support or maintenance services to the Client. Where such services form part of the Proposal or

Work Agreement, they shall be provided by Plug and Play subject to separate terms and conditions concerning such services.

## 10 DATA MIGRATION

- 10.1 Where Plug and Play has agreed to assist the Client with the migration of data, this shall be charged for at an hourly rate to be agreed in advance between the Client and Plug and Play.
- 10.2 The Client acknowledges that given the nature of data migration, it is not possible for Plug and Play to guarantee how long the data migration process will take to complete. Any indication that Plug and Play does give the Client regarding the duration of this process shall be an estimate only and subject to ongoing review. Plug and Play shall update the Client on the progress of the migration at regular intervals.

## 11 HOSTING SERVICES

- 11.1 Where Plug and Play has agreed to provide the Hosting Services for the Site these shall be provided by Plug and Play using the servers of Third Party ISPs.
- 11.2 Plug and Play shall use reasonable endeavours to select reputable Third Party ISPs but shall not be responsible for any unavailability or interruption to the Site caused by a Third Party ISP, its servers, other equipment, networks or any public network.
- 11.3 Occasionally it may be necessary for Plug and Play to transfer the Site to a different Third Party ISP.
- 11.4 Either party may terminate the Hosting Services on one month's prior written notice.
- 11.5 The Hosting Services shall be charged for monthly in accordance with Plug and Play's then current rates as advised by Plug and Play to the Client.
- 11.6 Plug and Play reserves the right to suspend the Hosting Services at any time where the Client has failed to pay any sum when due to Plug and Play under the Agreement.
- 11.7 Plug and Play reserves the right to terminate the Hosting Services if circumstances arise which render it unable to provide such services including termination of its arrangements with relevant Third Party ISPs.

## 12 LIMITATION OF LIABILITY

- 12.1 Subject to clause 12.4 Plug and Play's liability for any claims arising out of or in connection with the Agreement, the Site, the Services and any Additional Services, however arising shall be limited in respect of all claims in aggregate to a sum equal to the total Fees (exclusive of VAT) payable by the Client.
- 12.2 Notwithstanding any other provision of the Agreement, but subject to clause 12.4, Plug and Play shall have no liability however arising out of or in connection with the Agreement, the Site, the Services and/or the Additional Services for any:
  - 12.2.1 direct or indirect loss of or damage to;
  - 12.2.2 profit;
  - 12.2.3 revenue;
  - 12.2.4 business;
  - 12.2.5 contract;

- 12.2.6 opportunities;
  - 12.2.7 anticipated savings;
  - 12.2.8 data;
  - 12.2.9 goodwill;
  - 12.2.10 reputation;
  - 12.2.11 use;
  - 12.2.12 indirect or consequential loss or damage; or
  - 12.2.13 claim arising out of a claim against the Client by a third party.
- 12.3 The term “however arising” in clause 12.2 covers all causes and actions giving rise to Plug and Play’s liability arising out of or in connection with the Agreement, the Site, the Services and/or the Additional Services including (i) any misrepresentation at any time, negligence, breach of statutory duty, other tort, repudiation, renunciation or other breach of contract, restitution or otherwise; (ii) whether arising under any indemnity; or (iii) whether caused by any total or partial failure or delay in supply of the or Services or Additional Services or defective Services or Additional Services.
- 12.4 The exclusions and limitations of liability contained in the Agreement shall apply regardless of whether the loss or damage was foreseeable or whether the Client notifies Plug and Play of the possibility of any greater loss or damage but no such exclusion or limitation shall apply to the extent prohibited or limited by law and in particular nothing in the Agreement shall affect liability:
- 12.4.1 for death or personal injury caused by negligence to the extent prohibited by the Unfair Contract Terms Act 1977;
  - 12.4.2 for fraudulent misrepresentation or other fraud; or
  - 12.4.3 for any breach of any obligations implied by the Supply of Goods and Services Act 1982;
- 12.5 Except where the Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions, terms and liabilities express or implied, statutory or otherwise, on the part of Plug and Play, in respect of compliance with descriptions, the quality or the fitness for purpose of the Services and Additional Services which are not expressly set out in the Agreement are excluded except to the extent such exclusion is prohibited or limited by law.

### 13 **FORCE MAJEURE**

Neither party will be liable for any failure or delay in performing its obligations under the Agreement to the extent that this failure or delay is the result of any cause or circumstance beyond the reasonable control of that party including acts of god, war, civil commotion or industrial dispute and that failure could not have reasonably been prevented or overcome. If either party is prevented from performing its obligations for a period exceeding three (3) months due to Force Majeure then the other party may terminate the Agreement on one month’s written notice.

## 14 CONFIDENTIALITY AND DATA

- 14.1 During the term of the Agreement and for five (5) years thereafter, each party will treat as confidential all information that it obtains concerning, but not limited to, the business, finances, technology and affairs of the other, ("Confidential Information").
- 14.2 Each of the parties will use at least the same degree of care (and not less than a reasonable degree of care) it uses to prevent the disclosure of its own confidential information of like importance, to prevent the disclosure of Confidential Information of the other party.
- 14.3 Each party will promptly notify the other party of any actual or suspected misuse or unauthorised disclosure of the other party's Confidential Information.
- 14.4 The provisions of this clause 14 shall cease to apply to: (i) information that has come into the public domain other than by breach of this clause or breach of any other duty of confidence; (ii) information that is obtained from a third party without breach of this clause or breach of any other duty of confidence; and (iii) information that is required to be disclosed by a regulatory or government body or court of competent jurisdiction with power to compel the disclosure.
- 14.5 Each party will comply with its obligations pursuant to the Data Protection Act 1998 ("DPA").
- 14.6 Where Plug and Play is required to process personal data (as defined in the DPA) of the Client, its employees, customers or other persons including site visitors ("Personal Data") as part of its obligations under the Agreement, the parties agree that for the purposes of the DPA, the Client shall be the Data Controller and Plug and Play shall be the Data Processor.
- 14.7 Plug and Play agrees that it shall:
- 14.7.1 only process Personal Data to the extent, and in such a manner, as is necessary for the purposes of the Services and only act in accordance with the Client's lawful instructions in respect of Personal Data; and
- 14.7.2 comply with the DPA and all relevant industry codes of practice and guidelines in relation to the confidentiality and processing of the Data ("DPA Rules").
- 14.8 The Client agrees it shall obtain all necessary consents from site visitors and its employees, clients and any other third parties before allowing any processing of Personal Data by Plug and Play.

## 15 TERMINATION

- 15.1 Plug and Play shall have the right to terminate the Agreement immediately on written notice to the Client:
- 15.1.1 if the Client commits any material breach of the terms of the Agreement (including failure to pay any invoice due to Plug and Play) which, in the case of a breach capable of remedy, is not remedied within thirty (30) days of service of a notice specifying the breach and stating the intention to terminate the Agreement if not remedied;
- 15.1.2 if the Client holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986); (c) has a receiver, administrator, or other encumbrancer take possession of, or appointed over, or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; or (d) ceases or threatens to cease to carry on business or

becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

- 15.1.3 if the Client (or any individual employed by or otherwise related to or acting on behalf of the Client) behaves in a manner which Plug and Play deems (in its absolute discretion) to be threatening, abusive or otherwise inappropriate; or  
if Plug and Play determines (in its absolute discretion) that its relationship with the Client has broken down to the extent that it is no longer tenable for Plug and Play to continue providing the Services.
- 15.2 The Client shall have the right to terminate the Agreement immediately on written notice to Plug and Play if Plug and Play:
- 15.2.1 materially fails to provide all (or a substantial part) of the Services in accordance with the Agreement, the Client shall promptly notify Plug and Play of such failure in writing and on receipt of such notice, Plug and Play shall have a period of 30 days in which to remedy the failure. If the material failure is not remedied within the 30 day period, the Client shall have the right to terminate the Agreement on written notice to Plug and Play;  
or
- 15.2.2 holds any meeting with or proposes to enter into or has proposed to it any arrangement or composition with its creditors (including any voluntary arrangement as described in the Insolvency Act 1986); (c) has a receiver, administrator, or other encumbrancer take possession of, or appointed over, or has any distress, execution or other process levied or enforced (and not discharged within 7 days) upon the whole or substantially all of its assets; or (d) ceases or threatens to cease to carry on business or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- 15.3 In the event that Plug and Play materially fails to provide part of the Services in accordance with the Agreement, the Client shall promptly notify Plug and Play in writing of such failure and on receipt of such notice, Plug and Play shall have a period of 30 days to remedy the failure. If the material failure is not remedied within such 30 day period, the Client shall have the right to terminate that part of the Services to which the material failure relates. In the event of such termination, the unaffected part of the Services shall continue in full force and effect.
- 15.4 Where Plug and Play is not in breach of the Agreement then the Client shall not have the right to terminate the Agreement at any time following approval and acceptance of the Proposal or Work Agreement by the Client without Plug and Play's prior written consent which may be given in Plug and Play's sole discretion but subject to the Client paying all Fees that are then due and which would have fallen due if the Agreement had continued and the Services had been performed.

## 16 CONSEQUENCES OF TERMINATION

### **Termination by the Client**

- 16.1 On termination of the Agreement by the Client pursuant to clauses 15.2 or 15.4 above or on expiry of the Hosting Services without renewal where applicable:
- 16.1.1 the licences granted by Plug and Play under the Agreement shall terminate immediately;
- 16.1.2 Plug and Play shall return the Client Content to the Client, and shall provide to the Client an electronic copy of the Site (including all content on the Site); and

- 16.1.3 the Client's further use of the Site following termination shall be subject to the licence granted in clause 8.2 and all other relevant terms of the Agreement ;
- 16.1.4 Plug and Play shall provide such assistance as is reasonably requested by the Client to transfer the Site to another provider of hosting services selected by the Client, subject to the payment of Plug and Play's expenses reasonably incurred in relation to such transfer. The Client acknowledges that Plug and Play shall need to modify the Site and this may have an impact on the functionality of the Site.
- 16.2 On termination by the Client of part of the Services pursuant to clause 15.3, only that part of the Agreement which deals with the effected part of the Services shall be terminated and the rest of the Agreement shall continue in full force and effect.

#### **Termination by Plug and Play**

- 16.3 On termination of the Agreement by Plug and Play pursuant to clause 15.1:
  - 16.3.1 the licences granted by Plug and Play to the Client under the Agreement shall terminate immediately;
  - 16.3.2 the Client shall cease all use of the Site.
- 16.4 Subject to clause 6.9 upon the termination (for whatever reason) of the Agreement , each party shall return to the other all licensed materials and Confidential Information, (and all copies), of the other party or if requested by the other party, shall destroy them.
- 16.5 Upon termination of the Agreement for any reason, the Client shall pay the Fees for all Services and any charges for Additional Services provided by Plug and Play up to the date of termination.
- 16.6 Termination or expiry of the Agreement shall be without prejudice to any rights, liabilities or remedies of a party accrued before termination (including payment to Plug and Play for all work done before termination is effective), nor shall it affect any provision of the Agreement which is expressly intended to come into or continue in force after termination or expiry.

### **17 ACCREDITATION**

The Client agrees that it shall allow Plug and Play to include a credit on the Site which states "site by Plug and Play" (or similar). The Client shall not attempt to remove this credit without obtaining the prior written consent of Plug and Play and subject to paying the sum £500 to Plug and Play by way of compensation for lost marketing opportunity.

### **18 SUB-CONTRACT**

- 18.1 The Client agrees that Plug and Play may delegate or sub-contract the provision of all or any of the Services to such third parties as it deems fit without the Client's consent.
- 18.2 Notwithstanding such delegation or sub-contracting Plug and Play shall remain responsible for ensuring that the Services are performed in accordance with the Agreement .
- 18.3 Where Plug and Play is a franchisee or licensed partner of Plug and Play Design Limited the Client acknowledges and agrees that:
  - 18.3.1 the Agreement is with that franchisee or licensed partner and not Plug and Play Design Limited; and therefore

18.3.2 Plug and Play Design Limited shall not be held responsible or incur any liability for the performance or non-performance of the Agreement or for any other claims or liabilities which may arise out of it or in connection with it or Plug and Play.

## 19 GENERAL

- 19.1 Nothing in the Agreement shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties nor shall it be deemed to grant any authority not expressly set out in the Agreement or create any agency between the parties.
- 19.2 Each party confirms that the Agreement sets out the entire agreement and understanding between the parties and that it supersedes all previous agreements, arrangements and understandings between them relating to the subject matter of the Agreement. In the event of a conflict between the the Proposal or Work Agreement and these terms and conditions the Proposal or Work Agreement shall prevail.
- 19.3 Each party confirms that it has not relied upon any statement, representation or understanding that is not an express term of the Agreement and shall not have any remedy in respect of any statement, representation or understanding which is not an express term unless made fraudulently.
- 19.4 No failure or delay by any party in exercising any right, power or remedy under the Agreement will operate as a waiver of that or any other right, power or remedy, nor will any single or partial exercise by either party of any right, power or remedy preclude any further exercise of any other right, power or remedy.
- 19.5 To the extent that any provision of the Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, then that provision shall be deemed not to be a part of the Agreement, and it shall not affect the validity, lawfulness or enforceability of the remainder of the Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 19.6 Any times, dates or periods specified in the Agreement may be extended or altered by agreement in writing between the parties. However, time shall not be of the essence, except where it is expressly stated to apply.
- 19.7 Nothing in the Agreement shall create or confer any rights or other benefits, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, in favour of any person other than the parties to the Agreement.
- 19.8 Each party shall, at the cost and expense of the other party, use all reasonable endeavours to do all such further acts and things and execute or procure the execution of all such other documents as that party may from time to time reasonably require, for the purpose of giving that party the full benefit of the assets, rights and benefits to be transferred to the other party under the Agreement.
- 19.9 Each party shall not be entitled to assign, transfer, charge or licence the whole or any part of its rights and/or obligations under the Agreement to any third party without consent of the other party.
- 19.10 The Agreement shall be construed in accordance with the laws of England and the parties agree that courts of England and Wales shall have exclusive jurisdiction in respect of all disputes and claims arising out or in connection with it.

- 19.11 The rights and remedies of the parties under the Agreement are cumulative and in addition to any rights and remedies provided by law. Any variation to the Agreement must be in writing and agreed by the parties. The Agreement may be executed in counterpart.
- 19.12 Any notice given under the Agreement shall be in writing and may be served by leaving it at, or by sending it by pre-paid first class post or recorded delivery to, the intended recipient's address or by sending it as an attachment by electronic mail to the intended recipient's email address.
- 19.13 The address of a party for service of notices is the address set out in the Proposal or such other address as a party may designate by notice given in accordance with this clause. A notice is deemed to be received when left at the recipient's address or, if sent by pre-paid first class post or recorded delivery, 48 hours from the date of posting, or if sent by email shall be deemed to have been received at the time of sending, provided that if it is not sent within business hours (meaning between 9.00am and 5.30pm on a Business Day) it shall be deemed to be received when business hours next commence. In proving the time of sending, it is sufficient to prove that the notice was duly sent by electronic mail to the email address of the party.

(updated 20 October 2014)