

THINKING JUICE LIMITED
Design & Development Services Schedule
(Schedule 1)
Last Updated: 13 January 2015

1.0 Definitions

In this Schedule unless the context requires otherwise the definitions contained within the Terms and Conditions shall apply and shall have the following meanings:-

- 1.1 **“Distinctive Customer Features”** means only those elements or features of the Customer Website which represent visual features or layouts created by the Supplier at the request of the Customer and using the Customer’s own property, original work or other Intellectual Property Rights and, for the avoidance of doubt, excluding any generic aspects or functionality aspects of the Customer Website;
- 1.2 **“Software”** means the Software being developed or customised by the Supplier to the specification of the Customer forming a major part of the Customer Website materials and all upgrades, enhancements, variations and fixes to the software;
- 1.3 **“Warranty Period”** means the period of one month (30 days) after completion of the Services relating to the Customer Website.

2.0 Introduction

- 2.1 The Customer wishes to, as part of the Services, engage the Supplier for the design and/or development of the Customer Website.
- 2.2 The Supplier shall provide the Customer with design, software development, procurement, consulting and computer programming services (the “Website Development Services”) for the purposes of developing the Customer Website.
- 2.3 The Supplier shall carry out these Services in accordance with any Timetable or Project Documentation produced in relation to the Project.
- 2.4 The Supplier shall supply to the Customer on full payment of all Fees the object and source code of the Software when requested by the Customer.

3.0 Terms and Conditions

The Supplier shall provide to the Customer a sample of generic website terms and conditions of use, privacy policy, fair usage agreement and accessibility policy for use on the Customer Website – this will be free of charge. However these are supplied as sample or precedent documents only to be used as a framework and the Supplier gives no warranty as to their legality, suitability or otherwise. It is the responsibility of the Customer to ensure that suitable conditions of use, privacy policy and accessibility policy are drafted and incorporated into the Customer Website. The Supplier shall not have any liability in respect of a breach by the Customer of this obligation.

4.0 Further Customer Warranty

The Customer further warrants that in its (or in any third parties) use of the Customer Website it will at all times comply with all applicable laws and will indemnify the Supplier in relation to any breach thereof.

5.0 Design

- 5.1 The Supplier will create for the Customer bespoke design according to the “design brief” agreed at the outset of the Project. The Supplier will supply a “proof” to the Customer of this design and this will typically be an image of the home page, and a content page. Where there are other areas of the Customer Website which vary significantly the Supplier may provide demos of these also.
- 5.2 A set number of hours will be included within the Project/Timetable for producing these designs and making any amendments reasonably required. If this is not stated within the Project proposal/Timetable it will be implied that the estimated time for this will be 8 hours. Should the Customer require further work on the design at this stage the Supplier

shall so far as is reasonable, provide additional hours of work/Services as may be scheduled and shall charge for these additional hours at its usual/ad hoc charge out rates for design work.

6.0 Approval of Designs

- 6.1 The Customer shall, within any agreed timescales or, failing which as soon as reasonably practicable and in any event no later than one working day after presentation to it approve or otherwise the designs presented to it.
- 6.2 Once the Customer has approved designs those designs will be used for the construction of the Customer Website. Any design changes from that point onwards will be subject to agreement by the Supplier and subject to additional Fees.

7.0 Hosting

The terms of the Hosting Schedule shall, as applicable, apply to any hosting of the Customer Website.

- 7.1 The Supplier recommends the use of its own hosting (or that of third parties used or recommended by it) as the Supplier considers these appropriate in respect of expected levels of Service. The Supplier does not in any way warrant the Services or uptime of third party providers.
- 7.2 In the event that the Customer supplies the hosting for the Customer Website (either by itself or through a third party nominated by it) the Supplier must be given access to the hosting service to a level or standard required for the Project requirements and this must be done at the outset of the Project. This includes FTP log-in details, sufficient web space, correct versions of software installed on the Customer's (or its nominated third party) server, a database of the required standard (if applicable to the Project).
- 7.3 The Supplier shall be entitled to withhold delivery or disclosure of FTP log-in details until all payments due by the Customer for the Project have been made.
- 7.4 If the Supplier incurs any additional time due to its use of the Customer hosting (for example due to the Hosting not meeting the minimum requirements, not receiving log-in details in a timely fashion or not being able to test the Customer Website until after development has started) the Supplier reserves the right to either charge additional fees for the time incurred by it; or adjust the project/timetable and expected milestone delivery.

8.0 Provision of Images for the Customer Website

Where the Customer requires images for use on the Customer Website and does not provide these images to the Supplier, the Supplier will endeavour to source and supply these from third parties at the Customer's expense. The Supplier in no way warrants that such images do not infringe any third party rights.

- (i) If images supplied are not suitable then additional fees may be charged (ie. there is the option of sourcing more extensive/expensive images from other stock photography libraries); the Parties may agree terms for supply of alternatives or for the supply by the Supplier of a professional photographer to construct the required image.
- (ii) The use of any such third party images will be subject to the restrictions of use and other terms imposed by the third party provider and the relevant fees shall be notified to the Customer (by the Supplier) in advance.
- (iii) The Licence above only covers use on the Customer Website or email and does not permit any sub-licensing or other use or dealing in the photographs.

9.0 Customer Obligations

The Customer shall:

- (i) Where applicable make available to the Supplier free of charge such access to premises and/or computer facilities as are necessary to enable the Supplier to carry out the Website Development Services.
- (ii) Ensure that its employees or other independent contractors co-operate reasonably with the Supplier and its employees in carrying out the Website Development Services.
- (iii) Promptly furnish the Supplier with such information and documents as it may reasonably request for the proper performance of its obligations under the Website Development Services.
- (iv) Ensure that the Project co-ordinator is available as reasonably required by the Supplier.

10.0 Change Control/Change

Requirements

If either Party identifies a requirement for a change, a change request will be sent to the other Party detailing the change requirements. If a change is proposed by the Supplier, the change request may state the effect of such change on the Project, the Timetable and the Software and the fees. If sent by the Customer the receipt of a change request by the Supplier will constitute a request for such change and the Supplier shall use reasonable endeavours to supply the necessary change details (together with the effect on the Timetable and the fees) within 10 working days from receipt of the change request or such other period as may be agreed.

11.0 Supplier Warranties

- 11.1 The Supplier warrants that it is entitled to enter into the Agreement for the Website Development Services and where applicable to grant any relevant licences to the Customer specified in this Schedule.
- 11.2 The Customer Website shall perform substantially in accordance with the Project Documentation, minor interruptions and errors excluded, and conform at the time of completion/delivery to any rules and regulations as may be agreed to in writing under the Agreement.

12.0 Intellectual Property Rights

Without prejudice to any of the Supplier's rights as set out in the Agreement.

- 12.1 The Intellectual Property Rights in the Software (including the source and object code) and in any documentation relating to the Customer Website shall be and remain vested in the Supplier.
- 12.2 All Intellectual Property Rights in the Distinctive Customer Features (including the source and object code) shall (subject to any third party rights) remain vested in the Customer.
- 12.3 If the Customers' use or possession of the Software or Customer Website or any part thereof in accordance with this Agreement is held by a Court of competent jurisdiction to constitute an infringement of a third parties Intellectual Property Rights then the Supplier shall (with the reasonable co-operation of the Customer) endeavour to procure for the Customer the right to continue using and possessing the Software or the Customer Website or modify or replace the Software or Customer Website (or part thereof) without detracting from the overall performance of the Customer Website – the above being subject to any other limitation of liability set out in this Agreement.

13.0 Fees and Expenses

As Per Order Form/Agreement.

14.0 Implementation Plan/Milestone.

Document

The Customer may receive from the Supplier Project Documentation outlining intended dates for the delivery of the Services and the Project.

15.0 Support Services

- 15.1 Within the first month after Completion; defect rectification work will be available (ie. under warranty and without additional charge).
- 15.2 Ad hoc additional work or services may be available; but there is no guarantee by the Supplier of the amount of work/ services available or of timescales within which it can be provided. However, the Supplier can offer a support contract (eg. for a specified number of hours per month and, in the case of competing customer demands, priority would be given to customers with such priority contracts; provided that separate support contract terms are agreed).