

## PROVISION OF SERVICES AGREEMENT

This Agreement (the "Agreement") is made between Infomagnet Ltd., of 65 Claremont Road, Highgate, London, N6 5BZ, UK, a company incorporated under the laws of England and Wales, company registration no. 4722865 (Infomagnet or the "Services Provider"), and the "Buyer" as named in any invoice or payment advice, collectively referred to as the "Parties" and is entered into with effect from the date of first invoice from the "Services Provider" to the "Buyer".

The Buyer wishes to be provided with the Services (defined below) by the Service Provider and the Service Provider agrees to provide the Services to the Buyer on the terms and conditions of this Agreement.

### 1. Key Terms

#### 1.1 Services

The Service Provider shall provide the following services ("Services"), including, but not limited to, the technical build of a website (the "Website") or other written or graphical work in digital format, to the Buyer in accordance with the terms and conditions of this Agreement:

The Services are as described in first and subsequent additional invoices or payment advice notes from the Service Provider to the Buyer.

#### 1.2 Delivery of the Services

- a. **Start date:** The Service Provider shall commence the provision of the Services on the date of the first invoice.
- b. **Completion date:** The Service Provider shall complete the Services (apart from the ongoing services of support and hosting indicated in the schedule of proposed work) within the timeframe written in the initial invoice, this normally being a set number of weeks after receiving approval from the Buyer of designs, specifications or other materials. ("Completion Date").
- c. **Limited period of free support:** The Service Provider shall provide ongoing support to remedy critical bugs and deficiencies which may appear from time to time and be found by The Buyer or his agents. This support will be limited in period to 6 weeks and will not include bugs created by the Buyer, malicious use of the site or by the release of new browser versions. Non-critical bugs will be remedied during this period for the browser types supported as detailed and will be provided on a goodwill basis.

- d. **On-going Service provision:** The Service Provider may provide services of an on-going nature, these include but are not limited to: Website hosting, email hosting, code repository hosting, support, training, consultancy. Provision of on-going services may be on an ad-hoc, as-required or repeat / recurring basis. In the case of Services provided on a repeat or recurring basis, the service period is shown in each invoice.

### 1.3 Site

The Service Provider shall provide the Services remotely with all work available to view in electronic format on the internet and training services provided using phone and the internet.

### 1.4 Price

- a. As consideration for the provision of the Services by the Service Provider, the price for the provision of the Services is indicated in the initial and following invoices and / or payment advice notes.
- b. All post production changes including but not limited to design changes, functionality changes, layout changes and other changes of scope made after the design mockups have been approved by the Buyer will be charged by the Service Provider to the Buyer in addition to the Price. These changes are charged at £125.00 per hour. All post production changes including but not limited to design changes, functionality changes, layout changes and other changes of scope made after the design mockups, specifications or other materials have been approved.
- c. Changes in functional specification, whether increases or decreases in scope of the Services and regardless of whether such changes might arise by a change in the Buyer's requirements, omission from the Services are as described in first and subsequent additional invoices or payment advice notes or any other reason must be requested by the Buyer in writing and will be charged at £125.00 per hour if no other specific agreement and invoice is issued.

### 1.5 Payment

- a. The Buyer agrees to pay the Price to the Service Provider on the following dates: 50% of the total projected Price before commencement of the Services. The remaining outstanding balance is due prior to making the Website live or prior to delivery of any other deliverables. The Service Provider shall invoice the Buyer for the Services that it has provided to the Buyer immediately before the Completion Date.
- b. The Buyer shall pay such invoices within 5 days of receipt from the Service Provider.
- c. The method of payment of the Price by the Buyer to the Service Provider shall be by electronic bank transfer.

## 2. General terms

### 2.1 Intellectual Property Rights

The Service Provider shall make available open source Material to the Buyer. This open source Material is covered by its own licence agreements (GNU General Public License, version 2). It is the responsibility of the Buyer to be aware of the provisions of such Licenses.

In respect of the Material specifically created for the Buyer as part of the Services, the Service Provider assigns the full title guarantee to the Buyer and any of the copyright, other intellectual property rights and any other data or material used or subsisting in the Material whether finished or unfinished.

If any third party intellectual property rights are used in the Material the Service Provider shall ensure that it has secured all necessary consents and approvals to use such third party intellectual property rights for the Service Provider and the Buyer.

For the purposes of this Clause 2.1, "Material" shall mean the materials, in whatever form, used by the Service Provider to provide the Services and the products, systems, programs or processes, in whatever form, produced by the Service Provider pursuant to this Agreement.

### 2.2 Warranty

The Service Provider represents and warrants that:

- a. it will perform the Services with reasonable care and skill; and
- b. the Services and the Materials provided by the Service Provider to the Buyer under this Agreement will not infringe or violate any intellectual property rights or other right of any third party.

### 2.3 Buyer's Obligations

The Buyer acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- a. Coordination of any decision-making with parties, including any third-party designers, technical advisors or infrastructure providers.
- b. Delivery of materials requested by the Service Provider which may include written briefs, designs or feedback on specifications, emails, designs or diagrams.
- c. Decisions relating to the design, navigation and content of the Website.
- d. Input of all website content unless otherwise expressly provided in the initial and following invoices and / or payment advice notes.
- e. Final proofreading and in the event that the Buyer has approved the Website including errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, the Buyer shall incur the cost of correcting such errors.

### 2.4 Limitation of liability

- a. Subject to the Buyer's obligation to pay the Price to the Service Provider, either party's liability in contract, tort or otherwise (including negligence) arising directly out of or in connection with this Agreement or the

- performance or observance of its obligations under this Agreement and every applicable part of it shall be limited in aggregate to the Price.
- b. To the extent it is lawful to exclude the following heads of loss and subject to the Buyer's obligation to pay the Price, in no event shall either party be liable for any loss of profits, goodwill, loss of business, loss of data or any other indirect or consequential loss or damage whatsoever.
  - c. Nothing in this Clause 2.3 will serve to limit or exclude either Party's liability for death or personal injury arising from its own negligence.

## 2.5 Term and Termination

- a. This Agreement shall be effective on the date of first invoice and shall continue, unless terminated sooner in accordance with Clause 2.5(b), until the Completion Date.
- b. Either Party may terminate this Agreement upon notice in writing if:
  - i. the other is in breach of any material obligation contained in this Agreement, which is not remedied (if the same is capable of being remedied) within 45 days of written notice from the other Party so to do; or
  - ii. a voluntary arrangement is approved, a bankruptcy or an administration order is made or a receiver or administrative receiver is appointed over any of the other Party's assets or an undertaking or a resolution or petition to wind up the other Party is passed or presented (other than for the purposes of amalgamation or reconstruction) or any analogous procedure in the country of incorporation of either party or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order in respect of the other Party.
- c. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## 2.6 Relationship of the Parties

The Parties acknowledge and agree that the Services performed by the Service Provider, its employees, agents or sub-contractors shall be as an independent contractor and that nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency relationship or otherwise between the parties.

The Buyer shall not assign these conditions or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without prior written consent from the Service Provider. Any such purported assignment or delegation by the Buyer without prior written consent of the Service Provider will be null and void and of no force or effect, unless otherwise expressly consented to by the Service Provider at its sole and absolute discretion

## 2.7 Confidentiality

Neither Party will use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Agreement and which is of a confidential nature. This obligation will

not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title to it or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which is independently developed by or for the recipient.

## **2.8 Notices**

Any notice which may be given by a Party under this Agreement shall be deemed to have been duly delivered if and a signed receipt is obtained upon delivery by hand, by registered first class post, or by electronic mail to two addresses of the other Party as specified in this Agreement or any other address notified in writing to the other Party. Subject to any applicable local law provisions to the contrary, any such communication shall be deemed to have been made to the other Party, if delivered by:

- a. registered first class post, 2 working days from the date of posting;
- b. hand, on the date of such delivery; and
- c. electronic mail, when the Party sending such communication receives confirmation of such delivery by electronic mail.

## **2.9 Miscellaneous**

- a. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
  - b. If any part, term or provision of this Agreement is held to be illegal or unenforceable neither the validity or enforceability of the remainder of this Agreement shall be affected.
  - c. Neither Party shall assign or transfer all or any part of its rights under this Agreement without the consent of the other Party.
  - d. This Agreement may not be amended for any other reason without the prior written agreement of both Parties.
  - e. This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto.
  - f. Neither Party shall be liable for failure to perform or delay in performing any obligation under this Agreement if the failure or delay is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil commotion or industrial dispute. If such delay or failure continues for at least 14 days, the Party not affected by such delay or failure shall be entitled to terminate this Agreement by notice in writing to the other.
  - g. This Clause 2.9(g) and Clauses 2.4, 2.6, 2.7, 2.8 and 2.9 of this Agreement shall survive any termination or expiration.
  - h. If either party employs lawyers to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable lawyers fees.
  - i. This Agreement shall be construed under the laws of England and Wales.
  - j. All obligations created by this Agreement shall survive change or termination of the parties' business relationship.
3. The Service Provider reserves the right to make changes to this Agreement at any time.