

Terms and Conditions for the Provision of Services

Boxharry Ltd. — a limited company registered under number 4404211 whose registered office is at Cornelius House, 178-180 Church Road, Hove, BN3 2DJ

You ("the Client") have requested Boxharry to carry out certain services relating to the internet and digital media. Upon agreement, Boxharry shall provide those services on the terms set out in these Terms and Conditions.

1. Interpretation

1. (1) In these Conditions:

"**Agreement**" means the signed copy of the quotation to provide services to which these terms and conditions relate.

"**Acceptance Date**" means the earlier of:

(a) the date on which the Client makes use of the services provided by Boxharry; or

(b) the date 14 days after the date on which Boxharry notifies the Client of completion subject

to clause 6(4).

"**Documentation**" means the instruction manuals, technical literature, user guides and other information supplied with the Software under the terms of the Licence.

"**Intellectual Property Rights**" means all or any of the following:

(a) know-how which shall mean all of the technical knowledge and expertise of Boxharry which is not in the public domain and which relates to the Services; and

(b) all Boxharry's copyright, design rights or other intellectual property rights in the Services subject always to the Client's rights under clause 9(2) and any third party rights in the same.

"**Licence**" means a licence of the Software in the terms set out in clause 9.

"**Renewal Date**" means the date 30 days prior to the date on which the Initial Term expires.

"**Services**" means the internet and intranet services and other related services together with any ancillary services as set out in the Specification.

"**Software**" means Boxharry's software, including software owned by third parties which Boxharry is entitled to use, enabling the Client to access the Services including such modifications or alterations thereto as may be made by Boxharry from time to time.

"**Specification**" means the detailed description of the Services set out in the Proposal

"**Working Hours**" means the hours between 0900 and 1730 on Monday to Friday (excluding Bank Holidays).

1. (2) In this terms and conditions where the context so admits words importing the singular shall include the plural and vice versa.

2. Boxharry Obligations

2. (1) Boxharry will provide the Services during the Working Hours in accordance with these terms and conditions and with the Specification. In the case of the services described in clauses 3, 4 and 5 the additional special provisions in those respective clauses shall also apply.

2. (2) These terms and conditions shall be entered into without prejudice to any other agreements entered into by Boxharry and its other customers in respect of the provision of services.

2. (3) Boxharry shall use its reasonable endeavours to notify the Client of any delay in the estimated delivery of the Services and Software and to provide a revised estimated time of delivery to the Client. Time is therefore not of the essence under these terms and conditions. Where the reasons for the delay are other than those covered in Clause 5(7), the Client shall have the right (within 14 days of the date of receipt of the notification) to advise Boxharry in Writing that it intends to terminate the Agreement. Such termination will then take effect immediately from the date of the Client so advising Boxharry. On such termination the Client's liability to Boxharry shall be limited to reimbursement to Boxharry of all costs, charges and expenses (and of any cancellation charges of Boxharry's sub-contractors or suppliers) up to the date of termination. If no such notification is given, the Agreement shall be deemed to include any such revised delivery schedule.

2. (4) If agreed in writing by the parties, Boxharry shall render progress reports to the Client at agreed intervals and progress meetings will be arranged to an agreed schedule.

3. Special provisions relating to web design services

3. (1) The Client shall provide Boxharry with such artwork, copy and other material required for inclusion in the website in sufficient time and in the format agreed for Boxharry to provide the Services, and acknowledges that delay may occur where it fails to do so.

3. (2) Any changes to the Specification requested by the Client shall be notified to Boxharry in writing. The Client agrees that it will be responsible for any resulting increase in costs.

4. Special provisions relating to access and web-hosting services

4. (1) Subject to the terms of this Agreement, Boxharry agrees to take all reasonable steps to ensure that the Services are provided continuously to enable the Client to use the facilities 99.5% of the time. However Boxharry reserves the right to interrupt or suspend the services for the purposes of routine maintenance (including preventative maintenance). Wherever possible Boxharry shall endeavour to notify the Client in advance in such circumstances.

4. (2) Boxharry undertakes to be the first point of contact if there is a service fault and aims to advise the Client of the nature of the fault and the procedure for its resolution within 4 Working Hours of its occurrence.

4. (3) Faults which are the responsibility of the network provider will be notified to the appropriate network provider without undue delay and Boxharry will take all reasonable steps to ensure that each network operator performs to its required service level but Boxharry shall not be responsible for any faults arising from the acts or omissions of the network provider.

4. (4) The Client accepts that these services may be affected by events beyond Boxharry's reasonable control, such as third party use of the network and agrees that Boxharry shall have no liability in respect of such events.

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4. (5) Boxharry gives no warranty whatsoever as to the quality of information received by the Client through the Service.

4. (6) Boxharry reserves the right to shut down the server and to remove material from the facility if Boxharry reasonably believes that the Client is making unlawful use of the facilities or that the Client's use of the facilities is likely to result in civil or criminal liability attaching to Boxharry.

4. (7) The Client undertakes to comply at all times with the Boxharry internet etiquette policy which is posted from time to time on the Boxharry website.

5. Boxharry warranties and liability

5. (1) This Agreement contains express warranties, undertakings and obligations on the part of Boxharry. All other statutory, implied, collateral and other conditions, representations and warranties are excluded insofar as permitted by law. Nothing herein shall exclude or limit Boxharry's liability for death or personal injury caused by its negligence.

5. (2) Boxharry provides a Warranty as follows:

5. (2) (a) that it has the unencumbered right to grant the Licences of the Software granted under the Agreement;

5. (2) (b) that it shall provide the Services and the Software with reasonable skill and care, to the description set out in the Specification;

5. (2) (c) that the Software will provide the facilities and functions set out in the Specification and will be free from defects in materials, workmanship and installation.

5. (3) Boxharry further warrants that it shall at its own expense make good any defects in the Software which are in breach of its warranties at clause 5(2) above during a period beginning on the Acceptance Date and ending on a date 30 days after that date provided that the Software has been used in accordance with the Documentation and the Licence.

5. (4) Clause 5(3) shall not apply if the Software has been subject to damage or abuse or alteration of any kind or if the defects are caused by computer hardware, computer operation systems or the use of the Software in conjunction with software other than the Software. In respect of any other error or defect in the Services provided under the Agreement and notified to Boxharry in a detailed notice in writing within 14 days of the notification of completion Boxharry agrees that it will make reasonable resources available free of charge to investigate the error or defect and endeavour to rectify it.

5. (5) The Services are supplied by Boxharry on the basis that they are for the sole use of the Client for the agreed purposes as set out in the Specification. If the Client divulges any information provided as part of the Services to any third party, the Client indemnifies Boxharry against any loss and liabilities whatsoever which Boxharry may incur either at common law or by statute in respect of any loss or damage suffered by that third party by reason of any such information.

5. (6) In no circumstances shall Boxharry be liable in contract or tort (including negligence) or otherwise, whatever the cause:

5. (6) (a) for loss of data or information;

5. (6) (b) for any loss of income, loss of use, business, contracts, revenues or anticipated savings; or

5. (6) (b) for any special indirect or consequential damage of any nature whatsoever;

arising out of the provision by Boxharry of the Services, or of any error or defect therein, or of the performance, non-performance or delayed performance by Boxharry of the Agreement.

5. (7) Boxharry shall not be liable to the Client or be deemed to be in breach of the Agreement for any delay or failure in providing the Services if the delay or failure results from any cause or circumstance whatsoever beyond its reasonable control including (but not limited to):-

5. (7) (a) Service interruptions;

5. (7) (b) theft or malicious damage;

5. (7) (c) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Boxharry or of a third party);

5. (7) (d) difficulties in obtaining raw material, labour, equipment or defaults or suppliers or sub-contractors for any reason whatsoever;

5. (7) (e) Act of God, explosion, flood, lightning, hurricane, fire or accident;

5. (7) (f) war, hostilities (whether declared or not) sabotage, insurrection, civil disturbance or requisition;

5. (7) (g) power failure or breakdown in machinery; or

5. (7) (h) failure by the Client to supply Boxharry with adequate information required to enable Boxharry to perform the terms of the Agreement.

5. (8) If, notwithstanding the foregoing, liability attaches to Boxharry then the amount recoverable by the Client or any person claiming through the Client in respect of any and all breaches by Boxharry shall be limited to the reasonable cost of remedying the defect or other matter constituting such breach (and Boxharry shall first be afforded the opportunity of carrying out the remedial work at its own cost) and in no circumstances whatsoever shall Boxharry's liability to the Client exceed the value of the amounts payable under the Agreement.

6. Client Obligations

6. (1) Any request for Services submitted by the Client must be accurate and the Client must give Boxharry any necessary information relating to the Services within a sufficient time to enable Boxharry to perform its obligations under the Agreement and these terms and conditions.

6. (2) No order which has been accepted by Boxharry may be cancelled by the Client except with the agreement in writing of Boxharry and on terms that the Client shall indemnify Boxharry in full against all loss (including loss of profit), costs (including the cost of all labour and any materials used), damages, charges and expenses incurred by Boxharry as a result of cancellation.

6. (3) The Client will be responsible for any graphic design, information or artwork that it requires to be incorporated within the Services and the Client agrees that the prices set out in Schedule do not include such items all of which will be the subject of a separate agreement of the parties.

6. (4) The Client agrees that it shall:

6. (4) (a) not describe itself as agent or representative of Boxharry;

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6. (4) (b) not assign, charge or otherwise deal with this Agreement without the prior written consent of Boxharry;
6. (4) (c) arrange appropriate insurance in respect of any equipment or material belonging to the Client which is sited on Boxharry's premises;
6. (4) (d) ensure that any facilities or Services provided under the Agreement are compatible with the Client's existing hardware and software environment except where Boxharry has expressly agreed to provide this service as part of its consultancy services;
6. (4) (e) indemnify and keep indemnified Boxharry against any and all claims, demands, loss, damage or liability (whether criminal or civil), legal fees and costs incurred as a result of:-
6. (4) (e) (i) material provided by the Client to Boxharry in respect of the Services including the chosen domain names (if any);
6. (4) (e) (ii) any use made of a website or internet facilities by the Client or any third party;
6. (4) (e) (iii) any material placed by any person on a website or other internet facility provided under the Agreement.
6. (5) The Client may not use the Service for any purpose for which it is not authorised, or for any illegal, immoral or offensive purpose, or for any purpose which infringes a third party's rights. Nor shall the Client use the Service or permit Users to use the Service, to create, store or communicate any material which is obscene, defamatory, offensive, abusive, illegal or in breach of a third party's rights, or for spamming, hacking or other such activities.
6. (6) The Client is responsible for obtaining all necessary data protection registrations and consents to enable its use of the Service, the Data and/ or the processing of any personal Data by Boxharry on the Client's behalf, to be in accordance with the Data Protection Act 1998.

7. Charges and payment

7. (1) In consideration of the provision of the Services, the Client shall pay to Boxharry the charges set out in the payment schedule of the Agreement ("the Charges") plus any VAT payable thereon in line with the payment terms in that Schedule.
7. (2) On renewal of the Agreement under clause 11(1). Boxharry shall notify the Client of any increase or decrease in the Charges in line with its current price list.
7. (3) The Client shall pay all sums due under the Agreement in full without any discount, deduction, set off or abatement on any grounds.
7. (4) Payment Terms: Deposits to be paid in 7 days; all other invoices strictly 30 days
7. (5) If the Client fails to make payment on the due date then, without prejudice to any other right or remedy available to Boxharry, Boxharry shall be entitled to cease provision of the Services forthwith and to charge the Client compound interest on the amount unpaid, at the rate of 8 per cent per annum above Bank of England base rate from time to time accruing from day to day, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
7. (6) Where payment is due on completion, the date of completion will be deemed to be the Acceptance Date.
7. (7) Licences and hosting are charged annually in advance at commencement of work and are not transferable.
7. (8) Title to any goods supplied to the Client under the Agreement shall remain with Boxharry and shall not pass to the Client until payment in full for the same (and for any other goods or services supplied to the Client) has been received by Boxharry. Risk passes on delivery which shall be deemed to take place when the goods leave Boxharry's premises.

8. Licensing of the Software

8. (1) Boxharry hereby grants to the Client an annual non-exclusive Licence to use the Software worldwide during the term of the Agreement.

9. Intellectual property

9. (1) Where any bespoke development work is to be carried out by Boxharry at the Client's request, then (in the absence of any agreement otherwise) the arising intellectual property rights will remain with and be the absolute property of Boxharry. Boxharry grants to the Client a non-exclusive annual licence worldwide to the Client in respect of such intellectual property rights.
9. (2) The Client may provide certain design work and information to Boxharry, which Boxharry may incorporate into the Service. The intellectual property rights in such items shall remain with the Client at all times.
9. (3) Subject to clause 9(2) above, the Intellectual Property Rights in the Documentation and the Services shall vest solely in and remain with Boxharry provided that nothing in this clause shall be taken as an assignment of any copyright or other intellectual property rights in any works produced by the Client whether arising as a result of Boxharry providing the Services or otherwise and it is hereby agreed that such works shall at all times remain vested in the Client.
9. (4) The Client undertakes that it will not:
- (a) itself supply to a third party any part of the Documentation, information, data, report or other material provided to the Client by Boxharry pursuant to the Agreement; or
- (b) make any copies of such material other than for internal use unless Boxharry has given its prior consent in writing to such supply or copying. The Client will, however, be entitled to make such copies of the Documentation as it requires for internal use only; or
- (c) modify, merge or combine the whole or any part of the Documentation with any other software or documentation;
- (d) adapt, translate, reverse engineer, decompile or disassemble the whole or any part of the Software except as permitted by law.
9. (5) Each Party shall promptly and fully notify the other of:
9. (5) (a) any actual, threatened or suspected infringement of the Intellectual Property Rights or of the intellectual property rights described in clauses 9(1) and 9(2) which comes to its notice; and

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9. (5) (b) any claim by any third party coming to its notice that the promotion or licensing of the Software infringes the right of any other person

and each party shall at the request and expense of the other do all such things as may be reasonably required to assist the other in taking or resisting any proceedings in relation to any infringement or claim referred to in this clause.

10. Confidentiality

10. (1) The Client shall:
10. (1) (a) keep confidential the Software and the Documentation, effect and maintain adequate security measures to safeguard the Software and the Documentation from access or use by any unauthorised person and in particular limit access to the same to those of its employees or agents who have a need to know; and
10. (1) (b) without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and Intellectual Property Rights in the Software and Documentation.
10. (2) Boxharry undertakes the same obligations, mutatis mutandis, as are detailed in clause 10(1) in respect of such intellectual property rights as are vested in the Client.
10. (3) Each Party agrees to treat as confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information and trade secrets relating to the other's business affairs or finances or any such information relating to the subsidiary, supplier, customer or client of the other except where knowledge or details of the information become public through no fault of that party.
10. (4) The terms of the Agreement are confidential and each party agrees not to disclose the same to any third party other than its professional advisers or where disclosure is required by law.

11. Duration and Termination

11. (1) (a) Subject to clause 11(1)(b) of these terms and conditions, the Agreement shall commence on the Commencement Date and shall thereafter continue for the period specified in the Specification.
11. (1) (b) In the case of Services which are to be provided for an indefinite duration, the Client must notify Boxharry by the Renewal Date if the Client wishes the Agreement to terminate on the expiry of the Initial Term. If no such notification is given, the Agreement will continue in full effect for successive periods of 12 months and the same renewal procedure will apply at the end of that 12 month period as if it were the Initial Period.
11. (2) Either party may by written notice terminate the Agreement forthwith if:
11. (2) (a) the other party shall be in material breach of any of these terms and conditions and which are not remedied by that party within 30 days of a notice from the innocent party specifying the breach and requiring its remedy; or
11. (2) (b) the other party has a petition presented for its winding up or for an administration order to be made in respect of it, resolves to wind itself up (other than for a solvent reconstruction or amalgamation), has a receiver or administrative receiver appointed over the whole or any part of its assets, enters into an arrangement or composition with its creditors or has a bankruptcy order made in respect of it.
11. (3) Any termination of the Agreement for any reason shall not affect any rights or liabilities which have accrued prior to the date of termination.
11. (4) On termination howsoever or whenever occurring the Client shall pay to Boxharry all Charges, expenses, (including legal and other fees incurred) and all arrears or other payments arising in respect of the provision of the Services under these Conditions in addition to any other rights and remedies Boxharry may have against the Client.
11. (5) On termination, Boxharry will return to the Client (or, if so agreed, destroy) all domains, information, drawings and other material provided by the Client for use in the Services.

12. General

12. (1) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Any such notice shall be deemed to be served on the third day after posting or if sent by facsimile transmission on receipt.
12. (2) Failure or neglect by Boxharry to enforce at any time any of these Conditions shall not be construed nor shall be deemed to be a waiver of Boxharry's rights hereunder nor in any way affect the validity of the whole or any part of these Conditions nor prejudice Boxharry's right to take subsequent action.
12. (3) No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Client and Boxharry.
12. (4) If any provision of these Conditions is held by any competent authority to be unlawful, invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby and shall continue to be valid and enforceable to the full extent permitted by law.
12. (5) The Agreement and these Conditions shall be governed and construed in accordance with English law and Boxharry and Client agree to submit to the exclusive jurisdiction of the English courts in the event of any disputes.
12. (6) The provisions of clause 10 shall survive the expiry or termination of the Agreement howsoever caused and shall continue thereafter in full force and effect.
12. (7) The Agreement shall take effect in substitution for all previous agreements or arrangement whether written, oral or implied between Boxharry and the Client relating to the subject matter of the Agreement and all such agreements and arrangements shall hereby be deemed to have been terminated by mutual consent.
12. (8) The Client shall not assign, sub licence, transfer, or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of Boxharry.
12. (9) Boxharry reserves the right to use all or part of the items produced under this Agreement for demonstrating Boxharry's expertise to potential clients. Unless otherwise agreed, Boxharry may publicise the fact that it has worked for the Client.