

FLEX DIGITAL
TERMS AND CONDITIONS

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.6.

Contract: the contract between Flex Digital and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from Flex Digital.

Customer Default: has the meaning set out in clause 6.4.

Deliverables: the deliverables set out in the Order produced by Flex Digital for the Customer.

Flex Digital: FLEX DIGITAL SOLUTIONS LTD (company number 16201031), a company registered in England and Wales with registered office at Runway East, 1 Victoria Street, Redcliffe, Bristol. BS1 6AA.

Guarantor: the person – being a director or officer of the Customer - identified by the parties as the guarantor of the Customer's obligations under the Contract.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Monthly Subscription Services: Services provided on a month-by-month basis.

Order: the Customer's order for Services as set out in the Customer's written acceptance of Flex Digital's quotation or in the Customer's order form, as the case may be.

Project Specification: the description or specification of the Services provided in writing by Flex Digital to the Customer, and as amended by written agreement of the parties from time to time, comprising as the case may be designs, prototypes and documentation.

Services: the services, including the Deliverables, supplied by Flex Digital to the Customer as set out in the Project Specification.

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision:
 - (i) is a reference to it as amended, extended or re-enacted from time to time; and
 - (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1** The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2** The Order shall only be deemed to be accepted when Flex Digital issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.4** Any quotation given by Flex Digital shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 2.5** All time estimates provided by Flex Digital are premised on the assumption that Flex Digital will utilise technology choices deemed suitable and appropriate for the Project Specification requirements. These choices will be based on a technology stack that Flex Digital considers to be suitable for execution of the Project Specification.

- 2.6** If the Customer wishes to incorporate any new technology components not explicitly listed or previously agreed upon in the Project Specification (or as part of the Monthly Subscription Services), such requests will be subject to review by Flex Digital and may require estimated timings and costs to be revised.

3. Supply of Services

3.1 Flex Digital shall:

- (a) supply the Services to the Customer in accordance with the Project Specification in all material respects and using reasonable care and skill;
- (b) supply the Services to the Customer (where they relate to digital services) on a monthly subscription basis, performing monthly optimisation and management to ensure delivery against the proposal to meet the Customer's goals; and
- (c) shall use all reasonable endeavours to meet any performance dates specified in the Order, proposal or Project Specification or otherwise, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.2** Flex Digital reserves the right to amend the Project Specification or monthly service subscription specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Flex Digital shall notify the Customer in any such event.

- 3.3** Flex Digital may outsource the Services or parts of them to trusted third party suppliers.

4. Support, retainer and Monthly Subscription Services

- 4.1** The number of recurring hours on a support or retainer basis will be defined in the Project Specification.

- 4.2** Support and retainer hours do not roll over into a subsequent month (or other time period), and are considered spent at the end of each month (time period). The Customer acknowledges that the reason for this is that Flex Digital must ensure it has the capacity to provide support services (such as staff available to work on issues and the provision of a helpdesk) whether support issues occur or not.

- 4.3** Flex Digital may choose to provide additional hours of support beyond the initial support agreement for the time period. Flex Digital reserves the right to charge extra for any additional time spent beyond the support agreement within each time period.

5. Hosting services

5.1 Flex Digital will use reasonable efforts to maintain availability of service but cannot guarantee that the Hosting Service(s) will be fault-free. Any fault found with the Hosting Service(s) must be reported as soon as possible to Flex Digital by either by telephone or support email at team@flex_digital.net. The Customer accepts that the Hosting Service(s) may be subject to downtime caused by scheduled or emergency maintenance or repair.

5.2 The Customer is responsible for keeping secure the login name and password to their area on the server and the integrity of their data.

5.3 The Customer agrees not to use the Hosting Service(s) to:

- (a) upload any virus, trojan or malware which could infect the server(s) or any other machines or allow anyone to store or download infected files;
- (b) publish or disseminate defamatory material or any material which could be in breach of the civil or criminal laws of England and Wales;
- (c) gain access to any information or resources of a third party without permission;
- (d) send unsolicited or spam email;
- (e) reduce the performance of server(s) to the detriment of other users;
- (f) upload any material which, in the sole discretion of Flex Digital, may be contrary to public decency and morality including (but not limited to) hate content, pornography or overtly tasteless material.

The Customer accepts that Flex Digital may inspect the server(s) at any time and, if any such material has been uploaded, is being linked to or has been transmitted, may immediately terminate the Hosting Service(s).

5.4 Flex Digital reserves the right to add, improve, modify or deactivate individual features, applications, scripts and programs as necessary in the interests of technical progress, security or availability of technical support to ensure the stable operation and integrity of the Hosting Service(s). The Customer agrees to cooperate and be responsible for managing any related adjustments to the Hosting Service(s) if requested to do so.

5.5 Flex Digital shall take reasonable steps to ensure that any deactivation of individual features, applications, scripts or programs will not result in changes to a core function. If such changes result in changes to a core function and Flex Digital is unable to provide a viable alternative, then the Customer shall be entitled to a prorated refund on cancellation.

5.6 Flex Digital is not liable for any loss, claim or damage caused by:

- (a) failure of backup;
- (b) failure by the Customer to make and store regular offsite backups outside of the Hosting Service(s);
- (c) failure of supply of the Hosting Service(s) within a specific timescale;
- (d) scheduled or emergency downtime;
- (e) corruption and/or loss of data or code;
- (f) unauthorised access to the Hosting Service(s).

6. Customer's obligations

6.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Project Specification are complete and accurate;
- (b) co-operate with Flex Digital in all matters relating to the Services;
- (c) provide Flex Digital with such information and materials as Flex Digital may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (e) where required in order to carry out the Services, provide Flex Digital with administration access to accounts with third party platforms, such as Meta Business Suite and Google Adwords;
- (f) ensure that that any content provided to Flex Digital for incorporation in the Deliverables does not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights); and
- (g) indemnify Flex Digital against all damages, losses and expenses arising as a result of any action or claim that clause 4.1(e) has been breached.

6.2 After receiving the Deliverables from Flex Digital, the Customer shall test compliance of the Deliverables with the Project Specification.

6.3 The Customer will be deemed to have accepted the Deliverables if:

- (a) the Customer uses any part of the Deliverables for any revenue-earning purposes or to provide any services to third parties other than for test purposes;

- (b) subject to clause 6.3(c), the Customer has not notified Flex Digital of any non-compliance with the Project Specification within 20 Business Days of receipt of the Deliverables; or
- (c) any non-compliance with the Project Specification results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's subcontractors or agents for whom Flex Digital has no responsibility (**Non-Supplier Defect**).

6.4 If Flex Digital's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, Flex Digital shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Flex Digital's performance of any of its obligations;
- (b) Flex Digital shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Flex Digital's failure or delay to perform any of its obligations as set out in this clause 6; and
- (c) if demanded in writing, the Customer shall reimburse Flex Digital for any costs or losses sustained or incurred by Flex Digital arising directly or indirectly from the Customer Default.

7. Charges and payment

7.1 The Charges for the Services shall be:

- (a) calculated on a time spent basis, at an hourly rate notified to the Customer;
- (b) for Monthly Subscription Services, calculated on a time and value basis; or
- (c) a fixed fee (or other fee arrangement) if confirmed in writing by Flex Digital.

In addition, the Charges shall include expenses incurred, such as travelling expenses and software licence fees (unless Digital have requested payment of such expenses on account).

7.2 Flex Digital will give an estimate of the likely total Charges on request.

7.3 For retainer or support work, hours spent are calculated as hours in the agreed time period (typically one month).

7.4 Flex Digital shall invoice the Customer:

- (a) on completion of the Services;
- (b) in advance, for any set-up fee; or
- (c) in advance on a monthly basis, for Monthly Subscription Services.

7.5 The Customer shall pay each invoice (including any VAT element) submitted by Flex Digital within 14 days of the date of the invoice. Time for payment shall be of the essence of the Contract.

7.6 Flex Digital reserves the right:

- (a) to revise an estimate of likely Charges if the Customer's instructions change or the Services become more complex or time consuming than initially envisaged, and will give the Customer advance notice of the revised estimate where possible;
- (b) to charge a higher hourly rate where any aspect of the Services is exceptionally complex or urgent, or requires particular skill, attention or specialised knowledge, and will give the Customer advance notice of such higher rate where possible;
- (c) to revise a fixed fee (or other fee arrangement) if it is deemed that the nature and scope of the work have changed from that initially agreed;
- (d) to increase the Charges on an annual (calendar year) basis, generally by 6%; and
- (e) to cease carrying out the Services if payment of an invoice is not made in accordance with clause 7.5, and in particular to cease carrying out monthly management of digital marketing services.

7.7 If the Customer fails to make a payment due to Flex Digital under the Contract by the due date, then, without limiting Flex Digital's remedies under clause 11, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause 7.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7.9 Flex Digital reserves the right to charge, and the Customer agrees to pay, for services provided in remedying any Non-Supplier Defect in the Deliverables (as defined in clause 4.3(c)).

8. Intellectual property rights

8.1 Upon receipt of payment by Flex Digital the Services all Intellectual Property Rights in the Deliverables shall be owned by the Customer.

8.2 Where the Deliverables include full source code:

- (a) The Intellectual Property Rights in any additional code produced for the Customer as part of the same project will also be owned by the Customer;
- (b) once Flex Digital has delivered the code, the Customer may then host the platform either with Flex Digital or on a hosting platform of its choice;
- (c) Flex Digital grants the Customer permission to use Flex Digital's directory in the source code (named 'Flex Digital') representing its library of background technology and intellectual property; and
- (d) the Customer must not (and must not allow any third party to) utilise the background technology for any activities which compete with Flex Digital.

8.3 Subject to clause 8.1, all Intellectual Property Rights in the following shall be owned by Flex Digital:

- (a) pre-existing intellectual property Flex Digital has utilised to generate the Deliverables, such as internal tooling, base frameworks or pre-existing design assets; and
- (b) material developed, designed or created by Flex Digital in carrying out the Services (including systems, software, know-how, reports, written advice, drafts, source code and working papers).

9. Data protection

The parties shall comply with the data protection laws applicable in the United Kingdom.

10. Limitation of liability

10.1 References to liability in this clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2 Nothing in these Conditions shall operate to exclude or limit Flex Digital's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud; or
- (c) any other liability which cannot be excluded or limited under applicable law.

- 10.3** These Conditions set out the full extent of Flex Digital's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Contract or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.
- 10.4** Flex Digital's total liability to the Customer shall not exceed shall the greater of:
- (a) the total Charges payable by the Customer for the Services, to the date of the claim of liability; and
 - (b) £100,000.
- 10.5** Flex Digital shall have no liability for:
- (a) loss of profits.
 - (b) loss of sales or business.
 - (c) loss of agreements or contracts.
 - (d) loss of anticipated savings.
 - (e) loss of use or corruption of software, data or information.
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 10.6** Flex Digital makes no warranty of any kind, whether express or implied, regarding any third-party products, third party content or any software, plug-ins, equipment, or hardware obtained from third parties that are used with or on the Customer's website.
- 10.7** Flex Digital has no liability for third-party plugins or software that may become unusable or affect performance of the Service(s) because of:
- (a) updates performed during maintenance or development;
 - (b) issues caused by the action or inaction of a licensor;
 - (c) withdrawal of a product or service by a licensor;
 - (d) change in third party licence terms;
 - (e) refusal by a licensor to extend licence terms; or
 - (f) failure by the Customer to adhere to or maintain awareness of third-party licence terms.
- 10.8** Unless the Customer notifies Flex Digital that it intends to make a claim in respect of an event within the notice period, Flex Digital shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3

months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

10.9 This clause 10 shall survive termination of the Contract.

11. Termination

11.1 The Contract shall terminate automatically on payment of all Charges due.

11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.3 Without affecting any other right or remedy available to it, Flex Digital may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

11.4 Without affecting any other right or remedy available to it, Flex Digital may suspend the supply of Services under the Contract or any other contract between the Customer and Flex Digital if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
- (b) the Customer becomes subject to any of the events listed in clause 11.2(c) or clause 11.2(d), or Flex Digital reasonably believes that the Customer is about to become subject to any of them; and

- (c) Flex Digital reasonably believes that the Customer is about to become subject to any of the events listed in clause 11.2(b).

11.5 Notwithstanding any other part of this clause 11, if the Customer engages Flex Digital to provide Monthly Subscription Services, the Customer must give 60 days' written notice to Flex Digital to terminate the Contract.

12. Consequences of termination

12.1 On termination of the Contract the Customer shall immediately pay to Flex Digital all of Flex Digital's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Flex Digital shall submit an invoice, which shall be payable by the Customer immediately on receipt;

12.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

12.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

13. Guarantee

13.1 In this clause 13, the **Guaranteed Obligations** are all monies, debts and liabilities of any nature from time to time due, owing or incurred by the Customer to Flex Digital including the Charges and any part of the Charges.

13.2 The Guarantor guarantees to Flex Digital to pay on demand the Guaranteed Obligations whenever the Customer does not pay any of the Guaranteed Obligations when due.

13.3 The Guarantor as principal obligor and as a separate and independent obligation and liability from their obligations and liabilities under clause 13.2 agrees to indemnify and keep indemnified Flex Digital in full and on demand from and against all and any losses, costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Flex Digital arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason or any failure of the Customer to perform or discharge any of its obligations or liabilities in respect of the Guaranteed Obligations.

13.4 The liability of the Guarantor under this guarantee shall not be reduced, discharged or otherwise adversely affected by:

- (a) any intermediate payment, settlement of account or discharge in whole or in part of the Guaranteed Obligations;
- (b) any variation, extension, discharge, compromise, dealing with, exchange or renewal of any right or remedy which Flex Digital may now or after the date of this guarantee have from or against any of the Customer and any other person in connection with the Guaranteed Obligations;
- (c) any act or omission by Flex Digital or any other person in taking up, perfecting or enforcing any indemnity or guarantee from or against the Customer or any other person;
- (d) any termination, amendment, variation, novation, replacement or supplement of or to any of the Guaranteed Obligations;
- (e) any grant of time, indulgence, waiver or concession to the Customer or any other person;
- (f) any insolvency, bankruptcy, liquidation, administration, winding up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Customer or any other person;
- (g) the death or incapacity (whether mental or physical) of the Guarantor, or any notice of his death or incapacity; or
- (h) any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or Security held from, the Customer or any other person in connection with the Guaranteed Obligations;
- (i) any claim or enforcement of payment from the Customer or any other person;
- (j) any act or omission which would not have discharged or affected the liability of the Guarantor had he been a principal debtor instead of a guarantor; or
- (k) any other act or omission except an express written release of the Guarantor by Flex Digital.

14. General

14.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14.2 Assignment and other dealings.

- (a) Flex Digital may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Flex Digital.

14.3 Confidentiality.

- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or Flex Digitals of the other party, except as permitted by clause 14.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14.4 Marketing. Flex Digital may describe its role in projects in promotional and marketing materials and take credit for authorship and, if not expressly objected to, include a link within and to the Customer's website.

14.5 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 14.6 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 14.7 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.8 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 14.8 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.9 Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 14.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.