Our Terms of Business

CIVIC
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Registered in Scotland SC221925
VAT Registration No 774906100
Civic Computing Ltd

Terms of Business

1. Iterations

Multiple iterations of creative work will be limited by the time allocated to them in the Proposal above. If additional iterations will exceed the allocated time the Client acknowledges that this may incur additional costs.

2. Acceptance

The Client will be afforded a period of 14 days from the completion of development to review the Website to ensure that The Client is satisfied. For the avoidance of doubt no further sums will be due hereunder if The Client gives notice in writing that it is not satisfied with the Website within the aforesaid 14 day period and in the event that no such written notice has been received by Civic Computing within the said 14 day period, The Client shall be deemed to be satisfied with the Website. Civic Computing will launch and ensure the satisfactory operation of the Website on the world-wide web within 7 days of the earlier of The Client confirming in writing that it is satisfied with the Website or it being deemed to be satisfied with the Website as aforesaid ("the Implementation Date").

3. Rights to the Design

(a) CIVIC acknowledges and agrees that all rights, title and interest including all present and/or future intellectual property rights of any kind whatsoever now or hereafter existing wherever in the world (including without prejudice to the foregoing generality copyright and/or patent rights) in the content of documentation, information and/or others provided by The Client remains the property of The Client. CIVIC assumes that all information given to it by The Client for use on the project belongs to the organisation and does not infringe any copyright.

(b) The programming source code, data base procedures and any other software or procedures required to build, power and amend the Website pursuant to the Proposal and make the website generally available on the world-wide web (hereinafter collectively referred to as "the Software") shall remain the property of CIVIC provided always that in exchange for the payments to be made to CIVIC by The Client pursuant to the Proposal, CIVIC hereby grants to The Client an irrevocable, world-wide, non-exclusive, non-transferable royalty free licence to operate a single copy of the Software for the sole purposes of building, powering and amending the Website and making the Website generally available on the world-wide web, which aforesaid licence shall begin at the Implementation Date and continue in force in perpetuity and without limit of time.

(c) In the event that this Agreement terminates for any reason other than where fault lies with The Client, then within five working days of receipt by CIVIC of a formal written request from The Client, CIVIC will provide The Client with a "flat HTML" version of the Website to allow The Client to continue use of the Website and any licence to The Client of the Civic Software pursuant to Clause 3(c) hereof shall be deemed to have been duly terminated by CIVIC.

(d) All texts, graphics, animations, audio and/or digital video components and all other components of the Website (other than the Software and the Civic Software) in which CIVIC has any interests or rights is hereby assigned to The Client.

(e) Subject to the terms of this Clause 3 CIVIC and its sub-contractors shall retain the rights, title and intellectual property rights in any ideas, know-how, techniques and methods, used to undertake the work required to produce the Website.

(f) CIVIC agrees that The Client's logo, trademarks, service marks or proprietary names or identifiers belonging to or licensed to The Client will remain the sole property of The Client. CIVIC also acknowledges The Client's right to the internet domain name "xxxxxxxxx" and related domains.

(g) Subject to the rights granted to The Client hereunder the terms of this Agreement shall not operate to assign or transfer any intellectual property rights from one party to the other.

4. Content

CIVIC shall not be liable for any delay in the Website due to The Client not supplying content as reasonably requested.

For the purposes of this clause content is classed as any company specific information, software, photos, video, graphics, music, sound and other material appearing on or the Website, which is not predetermined in the design specification and is to be provided by The Client.

In essence, anything which The Client would wish to contribute themselves as opposed to having CIVIC carry out the work for them.

Examples of content could be information for "News Items", "About us", "Company Information", which quite naturally, CIVIC do not have any valid, informed input to.

5. Payment

All work will be invoiced as per the Payment Schedule. Terms are 30 days from invoice unless specified otherwise. This is a fixed-price contract and no fees or expenses beyond those referred to in the Proposal and limited by clause (1) – Iterations, shall be payable by The Client whether in relation to travel, accommodation, expenses or other services.

6. Change Requests and Co-operation

(a) The Client's request for any material change in the Website and any other services to be provided hereunder must be in writing; this requirement pertains to all such requests including but not limited to requests for material changes in project plans, scope, specifications, schedule, designs, or requirements. CIVIC shall not be obligated to perform tasks described in The Client's request until the parties agree in writing to the proposed material change.

(b) The Client acknowledges that timely provision of and access to office accommodations, facilities, equipment, assistance, co-operation where necessary, together with complete and accurate information and

data in all material matters from its officers, agents, and employees (collectively, “Co-operation”) are essential to performance of any services, and that CIVIC shall not be liable for any deficiency in performing services if such deficiency results from The Client’s failure to provide full Co-operation as aforesaid.

(c) Without prejudice to the terms of clause 6 (b) it is a material and essential term of this Agreement that all obligations due under this Agreement are met timeously and in full.

7. Project Leader

CIVIC agrees to provide the services of an in-house project manager to personally supervise all of CIVIC's work on the project.

8. Insurance

CIVIC agrees, during the term of this Agreement, to maintain, at its sole expense, all necessary workmen's compensation, liability, and other insurance.

9. Warranties

(a) CIVIC warrants and represents to The Client that it has all rights necessary to perform its obligations under this Agreement and that no party has or is entitled to claim or will have or be entitled to claim any intellectual property or other right or interest in the Website and/or any other services to be provided hereunder which is inconsistent with any undertakings given by CIVIC in, or which will prevent CIVIC from implementing its obligations under, this Agreement.

(b) CIVIC will ensure that during the period commencing with the Implementation Date and ending on the termination of this Agreement:-

(i) the Website is operational and has the specification, functionality and appearance specified in the Website Definition and otherwise continues to comply in all material respects with the Website Definition, and

(ii) without prejudice to the generality of Clause 9(b)(i) hereof, the Website functions appropriately when viewed using recent versions of standard internet browser software and is in all respects fit for the purpose it is intended hereunder.

(c) CIVIC shall provide all of the services hereunder, including without prejudice to the foregoing generality the building, powering and amending the Website, with reasonable skill and care.

(d) CIVIC will be responsible for hosting the Website at rental charges specified in the Proposal and CIVIC will make reasonable commercial efforts to ensure that the server running the Website is functioning twenty four hours a day, seven days a week at their sole cost during the period commencing with the Implementation Date and ending on the termination of this Agreement.

(e) Prior to the Implementation Date the parties shall agree (both acting reasonably) the URL at which the Website shall be sited and CIVIC shall not alter such URL thereafter without the prior consent of The Client (acting reasonably).

10. Liability

(a) CIVIC shall indemnify The Client and keep The Client fully and effectively indemnified on demand against any loss or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of or any breach of this Agreement by CIVIC, its employees, agents or sub-contractors.

(b) The Client shall indemnify CIVIC and keep CIVIC fully and effectively indemnified on demand against any loss of or damage to any property or injury to or death of any person caused by any negligent act or omission or wilful misconduct of or any breach of this Agreement by The Client, its employees, agents or sub-contractors.

(c) Except in respect of injury to or death of any person (for which no limit applies) the liability of CIVIC under this Clause in respect of each event or series of connected events shall not exceed the aggregate of all sums paid by The Client to CIVIC under the Proposal.

(d) Except in respect of injury to or death of any person (for which no limit applies) the liability of The Client under this clause in respect of each event or series of connected events shall not exceed the aggregate of all sums paid by The Client to CIVIC under the Proposal.

(e) Notwithstanding the terms of this agreement, neither party shall be liable to the other for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or otherwise.

(f) CIVIC shall not be liable to The Client for any loss arising out of any failure by The Client to keep full and up-to-date security copies of the computer software and data it uses in accordance with best computing practice.

11. Confidentiality

CIVIC agrees that it shall not disclose, publish, or otherwise make available to any person or party, except its own employees or sub-contractors working on the project who need to know, any information related to the business or affairs of The Client (including, but not limited to, information concerning its business affairs, property, methods of operation, customers, procedures, marketing policies and practices, and systems) which is disclosed to CIVIC in connection with its work on the Proposal or which it otherwise carries out pursuant to this Agreement. CIVIC shall insure the confidentiality of this information in a manner using at least as great a degree of care as the manner used to maintain the confidentiality of CIVIC's own most confidential information. CIVIC acknowledges that the disclosure of any such information will give rise to irreparable injury to The Client, which cannot be adequately compensated in damages. Accordingly, CIVIC agrees that The Client may obtain injunctive relief against disclosure or threatened disclosure of this information, in addition to such other remedies, which may be available to The Client.

12. Force Majeure

The parties to this Agreement shall not be responsible for any failure or delay in the performance of any obligations under it caused by acts of God, flood, fire, war or strikes.

13. Termination

(a) Unless earlier terminated in accordance with the following provisions of this Clause 13, this Agreement shall commence as at the date The Client instructs CIVIC to proceed with the work pursuant to the Proposal and shall continue in full force and effect in perpetuity and without limit of time.

(b) Without prejudice to The Client's rights pursuant to Clause 13(c) hereof, either party has the right to terminate this Agreement (i) if the other party breaches or is in default of any obligation under it if the default is incapable of cure or, if being capable of cure, has not been cured within thirty (30) days after receipt of written notice of such default or such additional time as the nondefaulting party may authorise in writing (CIVIC may not terminate this Agreement or suspend its performance under it due to lack of payment if payment has not been made due to an alleged breach as to which The Client has given CIVIC written notice), or (ii) a liquidator or a receiver is appointed to the other party or an administration order is made in respect of the other party.

(c) The Client may terminate this Agreement at any time without penalty by serving not less than three months' prior written notice of termination referring expressly to this clause on CIVIC.

(d) On termination of this Agreement CIVIC shall no longer have an obligation to supply the support services pursuant to Clause 14 hereof.

(e) The rights and obligations of the parties under Clauses 3, 9, 10, 11 and 13 shall survive any termination (howsoever arising) of this Agreement.

(e) The expiry or earlier termination of this Agreement (howsoever arising) shall be without prejudice to the provisions of this Clause 13 and to any rights of either party which may have accrued by, at or up to the date of such termination.

14. Support Services

Throughout the duration of this Agreement :-

(a) CIVIC will carry out the user training and online marketing in accordance with the terms of the Proposal.

(b) CIVIC will respond as follows to defect reports from The Client relating to the Software, the Civic Software and/or the Website depending on the category of defects as follows:-

(i) Critical -Website ceases to operate, the Software and/or the Civic Software crashes and/or significant data loss occurs - CIVIC will respond within one business day acknowledging the defect and within one further business day shall produce a solution.

(ii) Non-Critical – where other defects occur in the Website, the Civic Software and/or the Software - CIVIC will respond within one business day acknowledging the defect and within a further five business days CIVIC shall produce a solution.

15. Dispute Resolution

In the event of any disagreement with respect to performance under this Agreement, the parties agree to first discuss the dispute informally at the CIVIC Project Manager - The Client Project Manager level. In the event

that a resolution is not achieved at that level, the parties shall each designate one member of senior management to negotiate the dispute directly. In the event that such negotiation is not successful in achieving the resolution of the dispute, the parties agree to submit the dispute to non-binding mediation by a mutually agreed-upon computer professional. The cost of retaining such professional shall be borne equally by the parties and shall be paid in advance. In the event that the recommendations of the professional are not accepted by both parties, the parties shall be free to pursue the remedies available to them, including, but not limited to, specific performance, it being the intent, however, that the foregoing procedures be used prior to the time that any litigation is commenced by either party against the other except when exigent circumstances exist.

16. Notices

All notices in connection with this Agreement shall be given or made upon the respective parties in writing via mail, email, or personal delivery. All notices shall be deemed as given as of the day of receipt by the receiving party.

17. Nondisturbance

CIVIC shall not assign this Agreement without The Client's prior written consent nor will CIVIC sub-contract or delegate any of its obligations under this Agreement.

18. Miscellaneous

(a) Failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such right in respect to the same or any other breach. CIVIC is providing services to The Client as an independent contractor and is not an agent of The Client in any respect.

(b) Each party agrees to refrain from hiring any current or prior employee of the other for a period of five (2) years from the date of this agreement. A violation of this provision constitutes irreparable harm, and the violating party shall pay all reasonable lawyers fees necessary for the enforcement of this provision.

(c) This Agreement may not be waived, altered, or modified except by written agreement of the parties.

(d) This Agreement shall be governed by the laws of Scotland. The paragraph headings in this Agreement are for convenience only, form no part of this Agreement, and shall not affect its interpretation. If any provision of this Agreement shall be held illegal, void, or unenforceable, the remaining portions of this Agreement shall remain in full force and effect.

(e) The Client may assign this Agreement to any subsidiary, successor, parent, or affiliate.

(f) No delay or failure in exercising any right under this Agreement and no partial or single exercise of any right shall be deemed to constitute a waiver of that right or any other right under it.

(g) The Client is responsible for the content of the Website which has been authorised or prepared by The Client and is required to indemnify CIVIC for any such liability incurred. In particular CIVIC prohibits the inclusion anything that is illegal, abusive or offensive or promotes or incites illegal activities in any jurisdiction. A breach of this term may cause CIVIC to terminate our services.

(h) The Client is responsible for ensuring that they have all the necessary intellectual and property rights on a world wide basis in respect of the content supplied by The Client to CIVIC for inclusion on the Website. The Client will indemnify CIVIC for any liability incurred in respect of any breach of such rights.

(i) CIVIC shall provide to The Client one standard set of CIVIC's instruction manuals and user guides to assist The Client with the operation of the Software and the Civic Software and the operation and amendment of the Website by The Client.

(j) Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties.

(k) In the event of a conflict between the terms of the Proposal and/or the Website Definition on the one part and the terms of this Agreement on the other part the provisions of this Agreement shall prevail.

AGREED AND ACCEPTED

Signed _____

(for and on behalf of CIVIC)

Date _____

Signed _____

(for and on behalf of The Client)

Date _____