

22 Point Six (technology) Ltd Terms and conditions for the supply of web services

1. Definitions and Interpretation

1.1 In this Contract, unless the context otherwise requires, the following expressions have the following meanings:

Business Day	means any day other than Saturday or Sunday that is not a bank or public holiday;
Client	means the person identified as the client on the Client Order;
Client Order	the Supplier's pro-forma order form setting out, inter alia, details of the Client and the Project and signed by the Client and including (for the avoidance of doubt) Schedule 1 and Schedule 2 of the order form;
Commencement Date	means the date set out in the Client Order as the "service commencement date";
Conditions	these terms and conditions as amended from time to time in accordance with clause 23.2;
Confidential Information	means all business, technical, financial or other information created or exchanged between the parties in the course of the Contract including the existence of the Contract and its subject matter;
Contract	the contract between the Supplier and the Client for the supply of the Project in accordance with these Conditions and the
Final Project Acceptance	means acceptance of the Project Services and the Web Site as referred to in clause 11;
Preliminary Payment	means the sums set out as pre-payment in Schedule 2 of the Client Order;
Project Services	means the work to be carried out by the Supplier for the Client as set out in the Project Specification;
Project Fees	means the price for the provision of the Project Services as agreed by the parties as set out in Schedule 2 of the Client Order;
Project Milestone	means one of multiple phases that the Project Services have been divided into as set out in the Project Specification;
Project Specification	means the specification for the Project Services agreed between the parties as set in Schedule 1 of the Client Order;
Site Materials	means all components of the Web Site as supplied by the Client to the Supplier for the purpose of developing and creating the Web Site, and as created or otherwise sourced by the Supplier in the course of developing and creating the Web Site including, but is not limited to, source code, text, graphics, images and animations;
Supplier	22PointSix (Technology) Limited (company registration 07026895), whose registered office is at Greenacre Court; and Station Road, Burgess Hill, West Sussex, RH15 9DS

Supplier link	The display of the suppliers logo on the bottom of the website with a hyperlink to their own website.
Web Site	the Client's website to be located at the URL set out on the Client Order.
Versions	The version is the design, colour, navigation and look and feel of the website.
Discovery meeting	A discovery meeting is a meeting held between the client and the supplier to discover what is important to the client and any consideration that the client would like included in the build.

- 1.2 Unless the context otherwise requires, each reference in this Contract to:
- 1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provisions of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 "this Contract" is a reference to this Contract;
 - 1.2.4 a Schedule is a schedule to the Client Order; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of these Conditions.
- 1.3 The headings used in this Contract are for convenience only and shall have no effect upon the interpretation of this Contract.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.

2. Basis of Contract

- 2.1 The Client Order constitutes an offer by the Client to purchase the Project Services in accordance with these Conditions.
- 2.2 The Client Order shall only be deemed to be accepted when the Supplier signs the Client Order at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

3. Project Specification

- 3.1 The parties agree the Project Specification sets out in full the work that is required by the Client. The Specification includes (but is not necessarily limited to) details of the following:
 - 3.1.1 the nature of the Client's business and the purpose of the Web Site;
 - 3.1.2 the type of work required, specifying either a new scratch-built Web Site, the re-design of the Client's current website, or modifications to the current website;
 - 3.1.3 the URL of the Web Site;
 - 3.1.4 the Site Materials (where relevant) that the Client will supply to the Supplier for use in the Project along with details of when and where those materials are to be used;

- 3.1.5 drafts of code, text and / or visual layouts (where available) that reflect the work required by the Client; and
- 3.1.6 the time frame for delivery of the Project Services including desired start and finish dates.
- 3.1.7 the supplier will established the 'look and feel', layout, navigation, functionality and colour schemes from the client brief or discovery meeting. The client is entitled to one change to the design of the home page within the price quoted. Changes to the design in any form after the home page has been approved are subject to additional charges at the standard charge rates of the supplier.
- 3.1.8 Either Party may request or propose amendments to the Project Specification. Any proposed amendments must be made in writing and may be subject to charges as set out above.
- 3.1.9 Without placing any obligation on it to do so, if the Supplier considers (in its sole discretion) that it is not reasonably practicable or advisable for any reason to carry out the Project Services or any part of them, the Supplier may give notice to the Client specifying the reasons. Within 5 days of receipt of the notice the Client will consult with the Supplier and agree what, if any, of the Project Services is to be undertaken. If the Client requests the Supplier to undertake the Project Services it shall pay the Project Fees for such Project Services whatever the outcome and agrees that the Supplier provides those Project Services without any liability on its part, save as set out in condition 14.1.
- 3.1.10 Subject to the Client complying with its obligations in the Contract the Supplier shall commence the provision of the Project Services on the Commencement Date.

4. Late Payment

If the Client fails to make any payment due to the Supplier as set out in the Client Order on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- 4.1 terminate this Contract by giving written notice to the Client; and/or
- 4.2 charge the Client daily interest rate of 8% per cent per annum above the Bank of England base rate until payment in full is made; and/or
- 4.3 recover any legal costs from the Client relating to the late payment.

5. Ownership of Site Materials

- 5.1 The Site Materials owned by the Client prior to entering into this Contract will remain the property of the Client in the form provided to the Supplier.
- 5.2 The Supplier shall assign to the Client all Site Materials created, developed or sourced by the Supplier on payment in full of the Project Fees and upon receipt by the Supplier the Final Project Acceptance form completed by the Client.

6. Intellectual Property

- 6.1 The Client warrants that it has obtained all relevant permissions and rights for the use of all Site Materials to be provided to the Supplier.
- 6.2 The Supplier shall bear no responsibility for ensuring that Site Materials supplied by the Client carry with them the appropriate third party permissions for use and reproduction.
- 6.3 The Supplier shall retain ownership of the copyright subsisting in any and all Site Materials created by them under this Contract until all charges are paid in full by the Client.

7. Site Materials

- 7.1 Unless specified otherwise in the Project Specification or otherwise agreed in writing by the parties, all Site Materials comprising text shall be provided by the Client in electronic format and all photographs and other graphics shall either be in electronic format or of a suitable print quality for scanning. The Supplier shall not be responsible for poor quality images where the poor quality is a direct result of the supply of poor quality originals from the Client.
- 7.2 The Client shall make all required Site Materials and other material available to the Supplier in a timely manner. The Supplier shall not be liable for any delays caused by the Client's failure to comply with this Sub-Clause.
- 7.3 The Supplier shall use reasonable endeavours to return to the Client all Site Materials and other material originally supplied by the Client. However the Supplier does not guarantee the return of such Site Materials and the Supplier shall not be liable for any loss or damage to such Site Materials. Accordingly it is the Client's responsibility to ensure that appropriate backup copies are made of all Site Materials before they are handed over to the Supplier.
- 7.4 The Client warrants that no Site Material consists of anything which may, under the laws of England and Wales, be deemed immoral, offensive, obscene or illegal. The Supplier reserves the right to reject such Site Materials and is under a duty to inform the relevant authorities of the Client's possession of such material if the Supplier considers the Site Material or the possession of it may be an offence.

8. Grant of Licence

The Client hereby grants to the Supplier a non-exclusive licence to use any and all Site Materials in connection with the delivery of the Project Services.

9. Delivery

- 9.1 The completed Web Site or application will be delivered to the Client immediately following testing by the Supplier through an approved 'file transfer protocol' site or a 'user acceptance testing' site as the Client shall in its absolute discretion decide.
- 9.2 Following delivery, the Client may request that the Supplier retains and securely stores a back-up copy of the Web Site. The Supplier shall use its reasonable endeavors to keep such a back-up safe and secure and shall do so at no additional cost to the Client.

10. Testing

- 10.1 Testing shall:
 - 10.1.1 test the functionality of all code on each individual page of the Web Site;
 - 10.1.2 check the integrity of all links;
 - 10.1.3 check animated or other video content for errors;
 - 10.1.4 test the functionality of all interactive features; and
 - 10.1.5 take place in the latest version of Chrome current at the time of testing , the latest version of Firefox current at the time of testing and Internet Explorer 9 and all versions above. Where specific requirements exist for earlier or different browsers a separate cost estimate for testing in such browsers can be provided to the Client.
- 10.2 The Supplier cannot guarantee that the web pages will look identical in all browsers.

11. Acceptance and Release

- 11.1 Following the completion of the Web Site, including the correction of any faults found during testing, the Supplier shall provide a Final Project Acceptance form for the Client to complete and return indicating completion and acceptance of the Web Site.
- 11.2 The Client shall only acquire all rights to use the completed Web Site in full upon the Supplier's receipt of the completed, signed Final Project Acceptance form.

12. Publicity

- 12.1 The Client hereby agrees to the placement of a hyperlink to the Supplier's web site on the homepage of the Web Site (**Supplier Link**).
- 12.2 The Supplier Link shall comprise the Client's logo and, if requested by the Client, its name.
- 12.3 The Client shall ensure the Supplier Link is on their homepage at all times when the Web Site is live.

13. Warranty

- 13.1 The Supplier hereby warrants to the Client that:
 - 13.1.1 the Web Site will, after completion, delivery and any remedial work required following testing, provide the facilities and functions and otherwise perform as set out in the Project Specification;
 - 13.1.2 the Supplier has and will continue to have the right to grant all the rights and licences granted herein or that it purports to grant to the Client pursuant to and under the terms of this Contract;
 - 13.1.3 the Client's use and operation of the Web Site will not infringe the intellectual property rights of any third party; and
 - 13.1.4 the Site Materials created or sourced by the Supplier (but excluding any Site Materials provided by the Client) will not contain anything that is in any way unlawful, harmful, threatening, obscene, harassing, discriminatory, defamatory or otherwise objectionable or that facilitates or promotes violence, terrorism, or any other criminal activity.
- 13.2 The Supplier warranty in this clause 13 is limited to a period of 12 calendar months following the completion of the Web Site.

14. Liability

- 14.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:
 - 14.1.1 death or personal injury caused by its negligence;
 - 14.1.2 fraud or fraudulent misrepresentation; or
 - 14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 14.2 Subject to clause 14.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:
 - 14.2.1 loss of profits;
 - 14.2.2 loss of sales or business;
 - 14.2.3 loss of agreements or contracts;
 - 14.2.4 loss of anticipated savings;
 - 14.2.5 loss of or damage to goodwill;
 - 14.2.6 loss of use or corruption of software, data or information; and
 - 14.2.7 any indirect or consequential loss.

- 14.3 Subject to clause 14.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to a sum equal to the Project Fees paid.
- 14.4 The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

15. Notices

- 15.1 All notices under this Contract shall be in writing.
- 15.2 Notices shall be deemed to have been duly given:
- 15.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient;
 - 15.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated;
 - 15.2.3 on the fifth Business Day following mailing, if mailed first class, postage prepaid; or
 - 15.2.4 on the tenth Business Day following mailing, if mailed by airmail, postage prepaid.
- 15.3 In each case notices shall be addressed to the most recent address, e- mail address, or facsimile number notified to the other party.

16. Confidentiality

- 16.1 During the term of this Contract and for a period of 24 months after termination or expiry of the Contract, the following obligations shall apply to the Party receiving Confidential Information (the "Receiving Party") from the other Party (the "Disclosing Party").
- 16.2 Subject to sub-Clause 16.3, the Receiving Party:
- 16.2.1 may not use any Confidential Information for any purpose other than the performance of its obligations under this Contract;
 - 16.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and
 - 16.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information.
- 16.3 The obligations of confidence referred to in all provisions of this Clause 16 shall not apply to any confidential information that:
- 16.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain prior to its receipt by the Receiving Party;
 - 16.3.2 is or becomes publicly available on a non- confidential basis through no fault of the Receiving Party;
 - 16.3.3 is required to be disclosed by any applicable law or regulation; or
 - 16.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect thereof and who imposes no obligations of confidence upon the Receiving Party.

- 16.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this Clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this Clause in addition to any damages or other remedies to which he may be entitled.
- 16.5 The obligations of the parties under all provisions of this Clause shall survive the expiry or the termination of this Contract for whatever reason.

17. Termination

- 17.1 Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
- 17.1.1 the other party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 20 Business Days after being notified in writing to do so;
 - 17.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 17.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 17.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 17.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - 17.1.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 17.1.7 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
 - 17.1.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 10 Business Days;
 - 17.1.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 17.1.2 to clause 17.1.7 (inclusive); or
 - 17.1.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 17.2 The termination of this Contract for whatever reason shall not affect:
- 17.2.1 the accrued rights and liabilities of the parties arising in any way out of this Contract as at the date of termination and in particular but without limitation the right to recover damages against the other; or

- 17.2.2 provisions that are expressed to survive this Contract, which shall remain in full force and effect.
- 17.2.3 Where termination is actioned and payments are scheduled as part of the Contract then the remaining monthly payments shall remain as due.
- On termination or expiry of this Contract the Client shall:
- 17.2.4 immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices (if any) and interest;
- 17.2.5 in respect of the Project Services supplied (including (but not limited to) any part of the Project Services where sums have been paid in advance by the Client for third party services) but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
- 17.2.6 not be entitled to any refund or re-imburement (in whole or in part) where the Supplier has engaged the services of a third party supplier and either paid for services in advance or committed to pay for services.

18. Relationship of the parties

Nothing in this Contract shall create, or be deemed to create, a partnership, the relationship of principal and agent, or of employer and employee between the Supplier and the Client.

19. Assignment

Neither Party shall assign, transfer, sub-contract, or in any other manner make over to any third party the benefit and/or burden of this Contract without the prior written consent of the other, such consent not to be unreasonably withheld.

20. Non-Solicitation

- 20.1 The Client undertakes that it shall not during the term of this Contract, nor during the period of 12 months following the termination or expiry of this Contract, either, on its own account or in conjunction with or on behalf of any other person, firm or company, solicit or entice away from the Supplier any employee of the Supplier.
- 20.2 Save with the Supplier's prior written consent the Client undertakes that it shall not during the term of this Contract, nor during a period of 12 months following the termination of this Contract, either, on its own account or in conjunction with or on behalf of any other person, firm or company, solicit or endeavour to solicit any business of the same nature as the Project Services from any person who at any time within 2 years prior to the relevant date has been a customer of the Supplier.

21. Force Majeure

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

22. Severance

The parties agree that, in the event that one or more of the provisions of this Contract is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Contract. The remainder of this Contract shall be valid and enforceable.

23. Entire Agreement

- 23.1 This Contract embodies and sets forth the entire agreement and understanding between the parties and supersedes all prior oral or written agreements, understandings or arrangements relating to the subject matter of this Contract. Neither Party shall be entitled to rely on any agreement, understanding or arrangement not expressly set forth in this

Contract, save for any representation made fraudulently.

23.2 Unless otherwise expressly provided elsewhere in this Contract, this Contract may be varied only by a document signed by both of the parties.

24. No Waiver

The parties agree that no failure by either Party to enforce the performance of any provision in this Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision of this Contract. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

25. Non-exclusivity

The relationship between the parties under this Contract is and shall remain non-exclusive. Save as provided in clause 20.2 both parties are free to enter into similar relationships with other parties.

26. Law and Jurisdiction

26.1 This Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

26.2 Any dispute, controversy, proceedings or claim between the parties relating to this Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.