

## Content Formula Terms of Business (20211028)

### 1. Definitions

- 1.1. "Client" means the customer or subscriber for the Services
- 1.2. "Company" means Content Formula Ltd.
- 1.3. "Confidential Information" means all information of a confidential or proprietary nature relating to the Company's or Client's business or finances whether imparted in writing, orally, electronically or on any other media
- 1.4. "Fee" means the fee payable by the Client for the Services
- 1.5. "Proposal" means the document prepared by the Company for the Client setting out the Services to be provided
- 1.6. "Services" means the services or project the Company has agreed to provide to the Client which are set out in the Proposal or as agreed by the parties

### 2. The Services

In consideration of the Client paying the Fee in accordance with clause 4 below, the Company will perform the Services in accordance with these Terms of Business. These Terms of Business may only be amended by written consent of both parties.

### 3. The Fee

- 3.1. The Fee will be estimated or agreed by the parties in advance. The Fee is exclusive of license costs, third party costs, disbursements, travel and out of pocket expenses which will be charged as appropriate and are not included in the estimate of the Fee unless clearly expressed to the contrary.
- 3.2. Unless otherwise stated, the fee excludes VAT and any other applicable taxes.
- 3.3. The Company reserves the right to change the Fee if:
  - 3.3.1. the Client requests the Company to perform services additional to those agreed by the parties
  - 3.3.2. the Client requests any changes to the Services
  - 3.3.3. the Client requests any changes to the timetable in which the Services are to be performed
- 3.4. In the case of Services with a duration of more than 12 months the Fee will be reviewed on the anniversary of their commencement and annually thereafter
- 3.5. Should the project be stalled for reasons outside the Company's control for a period of more than 2 weeks the company is entitled to charge a reasonable project recommencement fee to cover the administration of restarting the project.
- 3.6. For certain jobs and tasks such as but not exclusive to wireframing, design, development and copywriting the Company includes in the proposal a stated number of rounds of amendments or iterations based on client feedback. Should the client request additional rounds of amendments or iterations these may be charged as extra at the Company's hourly rate.
- 3.7. The Company reserves the right to re-estimate the fee following Discovery, Specification and Wireframing. This is because additional requirements may arise during these project phases.

### 4. Terms of Payment

- 4.1. Fees will be invoiced at times stipulated in the proposal document.
- 4.2. The Company will submit an invoice to the Client in respect of the Fee and any disbursements, travel, third party costs and out of pocket expenses and the Client agrees to pay such invoice within 14 days of the date of the invoice.
- 4.3. If the Client fails to pay the invoice by the due date interest shall be chargeable at 5% above the UK Base Rate per annum from the date payment was due until the invoice is settled in full. Further the Company shall be entitled to cease performing the Services until the invoice is settled.

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- 4.4. If the Client fails to pay the invoice by the due date and following reasonable attempts by the Company to chase the payment the Company reserves the right to charge for administration and time required to pursue payment at the Company's hourly rate
  - 4.5. The Client shall not be entitled to withhold payment or make any deduction from the Fee whatsoever notwithstanding any dispute between the parties.
  - 4.6. The Client must advise the Company in writing within 10 days of receipt of an invoice if it disputes all or part of an invoice.
5. Copyright
- 5.1. Subject to the clauses in section 5 below, all copyright and any other intellectual property rights (the "Rights") in any design, artwork, imagery, computer code, source file, report, materials or any other work created by the Company for the Client pursuant to the Services (the "Works") shall belong to the Company indefinitely save if a third party has any prior rights.
  - 5.2. Rights in materials provided by third parties shall belong to such third party unless specifically assigned to the Client by them.
  - 5.3. The client has the right to use the Works for which they have paid the full and agreed fee for internal purposes. For clarity the client may not in any way sell, resell, market, licence or commercialise the Works either in whole or in part. Furthermore, the client may not reverse engineer the Works.
  - 5.4. Any Rights in any of the Works which was developed by the Company prior to providing the Services to the Client or in any unsuccessful presentation or pitch to provide services will remain with the Company.
6. Testing, User Acceptance Testing (UAT), defects, bugs and warranty
- 6.1. Software developed for the client by the company will be tested before being handed over to the client. This does not guarantee that the software will be free of defects or bugs.
  - 6.2. If a User Acceptance Testing (UAT) phase is explicitly included in the proposal the client will be given the opportunity to run their own UAT lasting 2 weeks (10 working days) during which the Company agrees to fix or make right free of charge any defects or bugs submitted through the official and agreed channels. This agreement does not include bugs or defects in third party software or code which shall be the responsibility of the third party and it is the client's responsibility to raise these with that party. Neither does this agreement include changes to the specifications agreed before development begins.
  - 6.3. When the 2-week UAT period has ended any further bugs or defects shall fall outside this agreement and shall be fixed at an agreed fee or using support hours.
  - 6.4. Save where expressly mentioned to the contrary, the Company does not offer any warranty to fix bugs or defects in its code or software.
7. Confidentiality
- 7.1. Both parties agree to keep the Confidential Information secret and shall only disclose it to its employees, contractors or directors who are necessarily engaged in the Services and shall ensure that such employees, contractors or directors keeps the Confidential Information secret.
  - 7.2. The provisions of clause 7.1 shall not apply to Confidential Information which is already in the public domain or which is legally required to be disclosed pursuant to any statute, regulation or order of the court or regulatory authority.
  - 7.3. This clause 7 shall apply for a period of 3 years following the completion of the Services.
8. Liability
- 8.1. The Company and any 3rd party involved in the provision of the services shall not be liable for any delay or error in the Services provided or for any claim arising from the Services or any Works provided in respect thereof unless solely due to its negligence and subject to clause 8.2

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- 8.2. The Company and any 3rd party involved in the provision of the services shall not under any circumstances be liable for any indirect or consequential loss or damages (including loss of business, goodwill, profits or otherwise) and its total liability shall not exceed a sum equal to the total Fee paid by the Client in respect of the Services in relation to which the claim or demand is made. Such limitation of liability shall not exclude or limit the Company's liability for death or personal injury resulting from its negligence.
  - 8.3. The Client shall indemnify the Company and any 3rd party involved in the provision of the services, in respect of any claim, loss or damages the Company and any 3rd party involved in the provision of the services may incur as a result of:
    - 8.3.1. The use of the Clients property (including any claim for infringement of intellectual property rights)
    - 8.3.2. Any material prepared for the Client and approved by the Client prior to publication
    - 8.3.3. The acts or omissions of the Client and the Client's employees in the performance of the Client's obligations pursuant to the Services.
  - 8.4. The Client warrants that it will take a full back up of any system and data on which the Company will work prior to any work being undertaken. Client also warrants that it has processes in place so that such data or system can be restored from back up in a timely manner so that any disruption or loss of earnings is minimal.
9. Termination
- 9.1. Save where otherwise specified, these terms shall automatically terminate upon completion of the Services and payment in full of the Fee is received by the Company.
  - 9.2. In the event that the Client wishes the Company to cease providing the Services prior to their completion, the Client shall make a payment to the Company for an amount equal to:
    - 9.2.1. the Fee for the portion of the work carried out as outlined in the agreed proposal plus 30% to cover the Company's resource costs and commitments [PLEASE NOTE: This additional 30% is because in order to deliver a project of this size the Company has to set aside resources to work on the project. If the project is terminated suddenly then this resource has to sit idle because it is difficult to mobilise resource onto other projects at short notice.]
    - 9.2.2. any agreed change requests.
    - 9.2.3. any sunk costs already committed for services, materials and goods from third parties"
  - 9.3. If either party fails to comply with any of its obligations under these Terms of Business or as set out in a Proposal or agreed by the parties then the other party should serve notice and ask for remedy within a reasonable amount of time. If the issue is not remedied then the party shall be entitled to terminate the Services.
10. Data Protection
- In the event that the Services require receipt by the Company of names and addresses (or other personal data) held by the Client in any form which is subject to the Data Protection Act (the "Act") and/or any equivalent data protection laws in any applicable jurisdiction ("data protection laws"), it is the Client's responsibility to ensure compliance with the Act and data protection laws and the Client warrants that there shall be no breach of the Act or any data protection laws by such transmission of data and indemnifies the Company in respect of all such claims.
11. Third Party Contractors
- The Company reserves the right to sub-contract part or parts of the Services to third party contractors and the fees for such contractors shall be paid in accordance with clauses 3 and 4.
12. Publicity

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The Client agrees that the company may use the Client's name for the purpose of its own publicity and marketing, stating that the Company has provided services to the Client and may outline the scope of the Services.

### 13. Inducement of Employees

- 13.1. Without the restriction to the right of an individual to freely accept employment, neither party shall induce an employee or contractor of the other party to enter its service as an employee or a contractor or an agent or in any other capacity at any time during the performance of the Services or for a period of 12 months thereafter.
- 13.2. Should for whatever reason an employee or contractor of either party enter the other party's service as an employee or contractor or agent or any other capacity, the other party agrees it will pay the party a fee equal to 30% of the individual's new annual salary or annual equivalent pay including benefits.

### 14. Notices

Any notice required to be given under these Terms of Business shall be in writing and delivered personally or sent by first class post to the other party's registered office.

### 15. General

- 15.1. The Company shall not be liable for failure to perform its obligations under these Terms of Business due to an event of force majeure which shall include inter alia fire, flood, Acts of God, riot, industrial action, shortages of materials, wars, disease, and civil unrests, governmental control or any other causes whatsoever beyond the reasonable control of the Company.
- 15.2. These Terms of Business represent the entire agreement between the parties and supersede any previous agreement or arrangements.
- 15.3. The waiver by the Company of any breach of these Terms of Business shall not be deemed to be a waiver of any subsequent breach.
- 15.4. The headings to clauses used in these Terms of Business are for convenience only and do not form part of the terms.
- 15.5. If any of the provisions contained in this Agreement is or is held to be illegal or unenforceable, such provision shall be deemed modified to the minimum extent necessary to be legal and enforceable and as so modified shall become part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect.
- 15.6. These Terms of Business and the provision of the Services shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the jurisdiction of the English courts. If the client should enter into any dispute with any of the company's third parties involved in the provision of the services the applicable jurisdiction set by that third party's terms of business may differ to the one of the company.
- 15.7. Should the company be sold in whole or in part or renamed this contract shall survive and be transferred to the new owner.

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