



# Web Site Design and Maintenance Terms of Business

## 1. INTERPRETATION

1.1. In this Agreement the following words have the following meanings:

"Additional Maintenance Fees"	means the charges referred to as such in the Quotation;
"Agreement"	means this agreement between the Company and the Customer relating to the use and maintenance of the Web Site;
"Company"	means e-Limelight Ltd, a company incorporated in England and Wales with the number 3880715, whose registered office is 21 Guest Avenue, Emersons Green, Bristol BS16 7GA;
"Customer"	means the person, firm or company who purchases the use of the Web Site from the Company, whose details are included in the Quotation, and requests that the Company maintains the Web Site in accordance with this Agreement;
"Quotation"	means the Quotation supplied by the Company and for which written acceptance has been received from the Customer;
"Standard Maintenance Fees"	means the charges referred to as such in the Quotation;
"Web Site"	means the web site designed and thereafter maintained by the Company for the Customer, details of which are set out in the Quotation;
"Working Days"	means days on which banks in England are open for normal business transactions.

1.2. In this Agreement references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3. In this Agreement references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4. In this Agreement headings will not affect the construction of this Agreement.

## 2. APPLICATION OF TERMS

2.1. Subject to any variation under Clause 2.3 this Agreement will be on the terms set out herein to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document). Any order placed by the Customer for the development of the Web Site shall constitute an unequivocal acceptance of the terms of this Agreement, save as varied between the parties from time to time. Any such variations to be recorded in writing and signed by both parties.

2.2. No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of this Agreement.

2.3. No representations about the Web Site nor any variations to this Agreement shall have any effect unless expressly agreed to in writing by the Company.

2.4. The Customer must ensure that the terms of its order and any applicable specification are complete and accurate. This shall include the personal details of the Customer, including, without limitation, its name and address.

2.5. For the avoidance of doubt, the Customer acknowledges that when the Company places the Web Site with a web host of its choice, the Customer assumes all liability for the costs incurred up to the value of this Agreement and, so far as the

acts and omissions of that web host are concerned, the terms of Clause 12 shall apply.

## 3. WEB SITE DESCRIPTION

3.1. The description of the Web Site to be developed for the Customer shall be as set out in the Quotation.

3.2. All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the web sites it designs. They will not form part of this Agreement.

## 4. WEB SITE DELIVERY

4.1. Dates specified by the Company for completion of the Web Site are intended to be estimates only and subject to 4.2 below time for completion shall not be made of the essence by notice.

4.2. The Customer acknowledges that the Company shall not be responsible for any delay in creating the Web Site where that delay is wholly or partly due to an act or omission of the Customer which shall include the quality of information provided to the Company by the Customer if, in the reasonable opinion of the Company, that information is not of satisfactory quality. Whenever it appears to the Company that such delay is likely it shall use its reasonable endeavours to notify the Customer in advance.

4.3. Subject to the other provisions of this Agreement the Company shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in completion of the Web Site (nor will any delay entitle the Customer to terminate or rescind this Agreement unless such delay exceeds 90 days).

## 5. PRICE

5.1. Unless otherwise agreed by the Company in writing, the price for the Web Site shall be the price set out in the Quotation (the "Price").

5.2. The price paid for the Web Site and the Standard Maintenance Fees and the Additional Maintenance Fees shall be exclusive of any value added tax which the Customer will pay in addition to the sum paid for the Web Site and on that date.

5.3. The Customer shall pay to the Company promptly and in full the total charge (as set out in the Quotation) for design and completion of the Web Site, or satisfactory completion thereof. Satisfactory completion will be deemed to occur on the earlier of:

5.3.1. the Customer using the Web Site; or

5.3.2. 5 days from the Company notifying the Customer in writing of the fact that in its reasonable opinion the Web Site is complete and receiving no written notice from the Customer within that period contradicting that view.

## 6. USE OF THE WEB SITE

6.1. By placing an order for the Web Site on the terms of this Agreement the Customer confirms that it has the legal right and ability to enter into this Agreement and to use the Web Site in accordance with its terms. This shall include any information promoted or provided by the Customer on the Web Site at any time.

6.2. The Customer shall ensure that all the information it includes on the Web Site is accurate and reliable (including, without limitation, any statements of fact and any advice given) and that it shall comply at all times with all relevant legislation.

6.3. The Customer shall ensure that it keeps any passwords and/or confidential information provided to it by the Company confidential. This obligation shall extend to all information designated as confidential as well as all information which is manifestly such.

6.4. The Customer acknowledges that, although the Company shall use its reasonable endeavours to ensure that the Web Site is not infiltrated by third parties, it cannot guarantee its security. If, at any time, the Customer is aware of any infiltration, or suspects that such infiltration may be taking place, it shall notify the Company forthwith.

- 6.5. The Customer shall have full responsibility for the information displayed on its Web Site and, in particular, shall not:
- 6.5.1. publish, post, distribute or otherwise disseminate defamatory, obscene, indecent or illegal material or information;
  - 6.5.2. threaten, harass, abuse, disrupt or violate the legal rights of any person;
  - 6.5.3. engage in any illegal activities whatsoever;
  - 6.5.4. make available any material protected by the intellectual property laws of any jurisdiction without the consent of the owner of those rights;
  - 6.5.5. act, or fail to act, in a manner which is not in compliance with all relevant laws and regulations.
- 6.6. The Customer shall defend, indemnify and hold harmless the Company and its employees, agents and sub-contractors from all liabilities, claims and expenses, including all reasonable legal fees necessarily incurred, that arise from its use or misuse of the Web Site.
- 6.7. The Company makes no representation that the Web Site will be appropriate or available for use in locations outside England and Wales and accessing it from territories where its content is illegal is prohibited.
- 6.8. The Customer acknowledges that all intellectual property rights in the Web Site as developed belong to the Company absolutely and the Customer shall have no right to use the Web Site save under the terms of this Agreement.
- 6.9. Immediately upon receiving a request from the Company, the Customer shall include the logo and name of the Company on the Web Site in a format required by the Company. In addition, immediately upon receiving a request from the Company the Customer shall remove the logo and name of the Company.
- 7. MAINTENANCE OF THE WEB SITE**
- 7.1. In return for payment of the Standard Maintenance Fees the Company agrees that it shall carry out the Maintenance Services which term shall consist of the following:
- 7.1.1. The Company carrying out minor amendments and enhancements to the Web Site from time to time as are deemed necessary or desirable by the Company and as are agreed with the Customer, the Customer acknowledging that the extent of such amendments and enhancements shall vary depending on the maintenance fees payable by the Customer.
  - 7.1.2. The Company remedying defects or malfunctions of the Web Site which the Customer has demonstrated to the reasonable satisfaction of the Company are not attributable to the Customer's misuse of the Web Site; and
  - 7.1.3. The Company correcting actual problems which have occurred during the Customer's normal use of the Web Site which are not due to the default of the Customer. The Company will absorb all costs of time, materials and expenses directly associated with these services.
- 7.2. The Company agrees that it shall use its reasonable endeavours to respond to any request received by the Customer for the Maintenance Services within certain designated timescales, the Company and the Customer agreeing on the level of urgency of each request made to the Company by the Customer under this Agreement. The timescales shall be as follows:
- 7.2.1. for non-urgent requests within 20 Working Days;
  - 7.2.2. for normal requests within 10 Working Days;
  - 7.2.3. for urgent requests within 5 Working Days; and
  - 7.2.4. for critical requests within 2 Working Days.
- 7.3. Under the circumstances listed below, the Company reserves the right to refuse the provision of the Maintenance Services. However if the Company in its absolute discretion chooses to provide the Maintenance Services then the Company will be entitled to charge for this provision at the Additional Maintenance Fees plus its out of pocket expenses. This discretionary maintenance shall apply where a fault results from:
- 7.3.1. the improper use, operation or neglect of the Web Site (save where this is caused by the direct negligence or default of the Company or its employees);
  - 7.3.2. any failure by the Customer to implement recommendations or solutions in respect of faults previously advised by the Company;
  - 7.3.3. the use of the Web Site by the Customer for a purpose for which it was not designed or intended;
  - 7.3.4. the Customer's failure, inability or refusal to afford the Company's personnel reasonable access to the Web Site;
  - 7.3.5. any accident or disaster affecting the Web Site (save where this is caused directly by the negligence of the Company or its employees);
- 7.3.6. any access or interference by unauthorised personnel whether employees of the Customer or not.
- 8. MAINTENANCE DELIVERY**
- 8.1. Unless otherwise agreed, any dates specified by the Company for maintenance of the Web Site are intended to be an estimate and time for completion shall not be made of the essence by notice.
  - 8.2. The Customer acknowledges that the Company shall not be responsible for any delay in maintaining the Web Site if that delay is due, wholly or partly, to an act or omission of the Customer which shall include the quality of the information provided to the Company by the Customer. Wherever it appears to the Company that such delay is likely it shall use its reasonable endeavours to notify the Customer in advance.
  - 8.3. Subject to the other provisions of this Agreement the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in maintaining the Web Site (even if caused by the Company's negligence), nor will any delay entitle the Customer to terminate or rescind this Agreement unless such delay exceeds 180 days in any instance.
- 9. MAINTENANCE WARRANTIES**
- 9.1. The Company warrants that it will perform the Maintenance Services with reasonable skill and care so that, where amendments and/or enhancements are made to the Web Site under Clause 7.1.1 the Web Site remains at the level of functionality set out in the Quotation and where the Web Site is maintained under Clauses 7.1.2 and/or Clause 7.1.3 is restored to the level of functionality set out in the Quotation. The Company also warrants that the personnel carrying out the maintenance work will be trained and competent to do so.
- 10. THE CUSTOMER'S OBLIGATIONS**  
The Customer shall:
- 10.1. use all reasonable endeavours to ensure that the Web Site is used in accordance with any documentation and/or specifications as are provided from time to time by the Company;
  - 10.2. not allow any party other than the Company to repair or maintain the Web Site without prior permission from the Company; and
  - 10.3. notify the Company as soon as reasonably practicable if the Web Site requires support or is not operating correctly.
- 11. PAYMENT**
- 11.1. Payment of the Price for the Web Site is due within 28 days of the date of an invoice issued by the Company to the Customer.
  - 11.2. Payment of the Additional Maintenance Fees and the Standard Maintenance Fees is due within 28 days of the date of an invoice issued by the Company to the Customer, payment to be made by cheque from a bank or building society account in funds, unless an alternative method of payment is agreed in writing with the Company.
  - 11.3. The Customer acknowledges that the Standard Maintenance Fees have been calculated on the basis of the Company spending a designated amount of time in carrying out each element of the Maintenance Services and that once the time spent on a particular task equates to an amount which exceeds that level the Company shall notify the Customer as such. The Customer shall then have the option of entering into a revised agreement where the Standard Maintenance Fees are increased to reflect the increased time being taken on each task or to pay the Additional Maintenance Fees for the particular task being carried out.
  - 11.4. Time for payment shall be of the essence.
  - 11.5. No payment shall be deemed to have been received until the Company has received cleared funds.
  - 11.6. All payments payable to the Company under this Agreement shall become due immediately upon termination of this Agreement despite any other provision although, for the avoidance of doubt, if this Agreement is terminated prior to the Company satisfactorily completing the Web Site (as defined) the Company shall only be entitled to be paid immediately such sum as is fair and reasonable and commensurate with its efforts on a quantum meruit basis.
  - 11.7. If the Customer fails to pay the Company any sum due pursuant to this Agreement then the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 12. LIMITATION OF LIABILITY**

- 12.1. The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: -
- 12.1.1. any breach of this Agreement; and
- 12.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with this Agreement.
- 12.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. [The Customer's statutory rights are unaffected.] All materials, information, software, products and services provided by the Company as part of the Web Site and carrying out the Maintenance Services are provided "as is" and the Company does not warrant that its content is accurate, reliable or correct nor that the Web Site will be available at any particular time or location nor that it will be free of any viruses.
- 12.3. Nothing in this Agreement excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or its liability for fraudulent misrepresentation.

**THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 12.4**

- 12.4. Subject to Clauses 12.2 and 12.3:
- 12.4.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the development Price if prior to satisfactory completion, or the Standard Maintenance Fees paid during that calendar year if subsequent to satisfactory completion; and
- 12.4.2. the Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement.
- 12.5. Where the Customer has not requested that the Company carry out a trade mark search on its choice of domain name, at the Company's then current charges, the Customer acknowledges that it assumes all the risks of a third party bringing an action against the Customer for trade mark infringement and/or infringement of any other third party right.

**13. ASSIGNMENT**

- 13.1. The Customer shall not be entitled to assign this Agreement or any part of it without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed.
- 13.2. The Company may assign this Agreement or any part of it to any person, firm or company.

**14. FORCE MAJEURE**

- 14.1. The Company reserves the right to defer the date of completion or the carrying out of Maintenance Services or to cancel this Agreement (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice to the Company to terminate this Agreement.

**15. TERMINATION**

- 15.1. Prior to the Company satisfactorily completing the Web Site (as defined), each party reserves the right to terminate this Agreement upon 30 days notice to the other at any time.
- 15.2. Subsequent to the Company satisfactorily completing the Web Site (as defined), the parties agree that, save where the Company terminates this Agreement in accordance with Clause 15.3, the minimum term of this Agreement shall be one calendar year from the date of satisfactory completion. Once the initial 12 months have elapsed the parties agree that either party shall have the right to terminate this Agreement upon 30 days notice to the other, to expire no earlier than the first anniversary date of satisfactory completion.
- 15.3. Each party reserves the right to terminate this Agreement immediately on notice if the other fails to comply with any term of this Agreement. This Agreement will also terminate immediately on notice if either party becomes bankrupt, goes into liquidation, suffers or makes any winding up petition, makes an arrangement with creditors, has an administrator, administrative receiver or receiver appointed or suffers or files any similar action in consequence of debt.

- 15.4. Upon termination of this Agreement for any reason the Customer's right to use the Web Site and to the Maintenance Services will cease automatically.

**16. GENERAL**

- 16.1. Each right or remedy of the parties under this Agreement is without prejudice to any other right or remedy of that party whether under this Agreement or not.
- 16.2. If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.
- 16.3. Failure or delay by either party in enforcing or partially enforcing any provision of this Agreement will not be construed as a waiver of any of its rights under this Agreement.
- 16.4. Any waiver by either party of any breach of, or any default under, any provision of this Agreement by the other will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 16.5. The formation, existence, construction, performance, validity and all aspects of this Agreement shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- 16.6. For the avoidance of doubt, nothing in this Agreement shall confer on any third party any benefit or the right to enforce any term of this Agreement.
- 16.7. In the event of a conflict between the terms of this Agreement and the Quotation hereto, the terms of this Agreement will prevail.

**17. COMMUNICATIONS**

- 17.1. All communications between the parties about this Agreement must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile or email transmission:
- 17.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
- 17.1.2. (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Agreement or such other address as shall be notified to the Company by the Customer.
- 17.2. Communications shall be deemed to have been received:
- 17.2.1. if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 17.2.2. if delivered by hand, on the day of delivery;
- 17.2.3. if sent by facsimile or email transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 17.3. Communications addressed to the Company shall be marked for the attention of Stephen Lester.