

TJS TERMS & CONDITIONS FOR WEBSITE DESIGN & DEVELOPMENT

1	<u>Interpretation</u>	(a)	the Materials to the Supplier; and
1.1	In any TJS Design & Development Agreement, unless the context requires otherwise, the following words have the following meanings: "Acceptance" means the acceptance of the Site by the Customer pursuant to Clause 4; "Business Day" means any day (other than a Saturday or Sunday) when banks are generally open for normal business in the City of London; "Changes" has the meaning set out in clause 12: "Change Control Procedure" means the procedure set out in clause 12 for the management of Changes; "Charges" means the charges in respect of the Services set out in the Particulars, together with any charges arising from the Change Control Procedure; "Confidential Information" means all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the Parties), where the information is: (a) identified as confidential at the time of disclosure; or (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure; "Force Majeure Event" means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under this Agreement including Act of God, fire, flood, lightning, war, revolution, riot or civil commotion; "Intellectual Property Rights" means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trade marks, service marks, trade names, patents, petty patents, utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off; "Materials" means the content provided to the Supplier by the Customer from time to time for incorporation in the Site; "Particulars" means Design & Development Agreement Particulars setting out the details of specifications of services and charges signed by both the Supplier and Customer; "Project" means the provision by the Supplier of the Services as set out in this Agreement; "Support" means the ongoing Support and assistance set out in the Particulars in the section under which services are provided "Visitor" means a visitor to the Site; and "Warranty Period" shall have the meaning set out in Clause 8.3.	(b)	the Supplier with access to, and use of, all information, data and documentation reasonably required by the Supplier for the performance by the Supplier of its obligations under this Agreement.
		3.2	The Customer shall be responsible for the accuracy and completeness of the Materials on the Site.
		4	<u>Development and Acceptance of Site</u>
		4.1	Acceptance of the Site shall be deemed to have taken place upon the occurrence of the earlier of any of the following events: (a) the Supplier delivers the Site to the Customer; or (b) the Customer uses any part of the Site for any revenue-earning purposes or to provide any services to third parties.
		5	<u>Third Party Products</u>
		5.1	The Supplier shall provide the 3 rd Party Products in accordance with the relevant licensor's standard terms.
		5.2	Subject to clause 5.3 the one-off licence fee for the Customer's use of the 3 rd Party Products incorporated within the design of the Site is included in the Charges.
		5.2	The Customer acknowledges and accepts that: (a) certain 3 rd Party Products require the Customer to enter into an agreement with the third party provider for the continued use of such 3 rd Party Products; and (b) the Customer shall be responsible for all payments to such 3 rd party provider under the relevant third party agreements.
		6	<u>Project Management</u>
		6.1	Each Party shall appoint a project manager who shall: (a) provide professional and prompt liaison with the other Party's project manager; and (b) have the necessary skills, expertise and authority to commit the relevant Party.
		6.2	Each Party's project manager shall meet and/or communicate at such intervals agreed between the Parties and/or as set out in the Specification. Following each meeting, the Supplier shall issue minutes to the Customer.
		7	<u>Charges and Payment</u>
		7.1	The Charges for the Services are as set out in the Particulars.
		7.2	The Supplier shall issue a VAT invoice in respect of the Charges in accordance with the Payment Schedule.
		7.3	The Customer shall pay to the Supplier the Charges set out in the Supplier's invoice within thirty (30) calendar days of the date of the Supplier's invoice.
		7.4	All Charges are exclusive of VAT.
		7.5	If the Customer fails to pay any amount payable by it under this Agreement, the Supplier shall be entitled, but not obliged, to charge the Customer interest on the overdue amount. Such interest shall be payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of three percent (4%) per annum above the base rate for the time being of Lloyds TSB. Such interest shall accrue on a daily basis and be compounded quarterly.
2	<u>Scope of the Project</u>	8	<u>Warranties</u>
2.1	The Supplier shall: (a) design, develop and deliver the Site in accordance with the Site Specification; and (b) provide the Support.	8.1	Each Party warrants to the other that it has full power and authority to enter into and perform this Agreement.
3	<u>Customer Responsibilities</u>		
3.1	The Customer acknowledges and accepts that the Supplier's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data that the Customer provides to the Supplier. Accordingly, the Customer shall provide:		

- 8.2 The Supplier warrants that it shall perform the Services with reasonable care and skill.
- 8.3 Subject to Clause 8.4 below, the Supplier warrants that the Site will perform substantially in accordance with the Site Specification for a period of sixty (60) calendar days from the date of Acceptance (the "Warranty Period"). During the Warranty Period, if the Site does not perform in accordance with the Site Specification, the Supplier shall, for no additional charge, carry out such work that is necessary to ensure that the Site substantially complies with the Site Specification.
- 8.4 The warranty set out in Clause 8.3 above, shall not apply to the extent that any failure of the Site to perform substantially in accordance with the Site Specification is caused by any Materials.
- 8.5 This Agreement sets out the full extent of the Supplier'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 this Agreement (whether by statute or otherwise) are hereby expressly excluded.
- 9 Limitation of Liability**
- 9.1 Nothing in this Agreement shall, or shall be deemed to, exclude or limit either Party's liability in respect of:
- (a) death or personal injury arising as a result of that Party's negligence;
 - (b) fraud, including fraudulent misrepresentation;
 - (c) any breach of that Party's obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - (d) any indemnity given by that Party under this Agreement;
 - (e) any breach by that Party of its obligations under this Agreement in respect of the other Party's:
 - (i) Intellectual Property Rights; or
 - (ii) Confidential Information; or
 - (f) otherwise to the extent that such exclusion or limitation is not permitted by law.
- 9.2 Subject to Clauses 9.1 above and 9.3 below, each Party's aggregate liability pursuant to or in connection with this Agreement shall in no event exceed one hundred percent (100%) of the Charges paid or payable under this Agreement.
- 9.3 Neither Party shall be liable for:
- (a) any of the following losses or damage (whether or not such losses or damage were foreseen, direct, foreseeable, known or otherwise):
 - (i) loss of revenue;
 - (ii) loss of profits;
 - (iii) loss of goodwill; or
 - (iv) loss of, damage to or corruption of data; or
 - (b) any indirect, special or consequential loss or damage howsoever caused whether or not such loss is covered in Clause 9.3(a) above.
- 10 Intellectual Property Rights**
- 10.1 All Intellectual Property Rights in the Site (including in the content of the Site and the Site Software), but excluding the Materials, arising in connection with this Agreement shall be the property of the Supplier. The Supplier hereby grants the Customer a royalty-free, non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site for its internal business purposes only.
- 10.2 Subject to Clauses 10.4 and 10.5 below, the Supplier shall indemnify the Customer against any final award of damages by a court against the Customer in respect of a claim that the Site infringes the Intellectual Property Rights of a third party.
- 10.3 The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 10.4 The indemnity provided by the Supplier in Clause 10.2 above shall not apply to the Third Party Products.
- 10.5 The indemnities provided in Clauses 10.2 and 10.3 are subject to the indemnified Party:
- (a) promptly notifying the indemnifier in writing of the claim;
 - (b) making no admissions or settlements without the indemnifier's prior written consent;
 - (c) giving the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - (d) allowing the indemnifier complete control over the litigation and settlement of any action or claim.
- 10.6 The indemnities in Clauses 10.2 and 10.3 above may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified Party
- 10.7 In the event that the Supplier is wound up or ceases to remain on the register at Companies House (except in the course of a group re-organisation) then the Intellectual Property Rights in the Site shall transfer to the Customer together with a right to a copy of the Site in electric form.
- 11 Term and Termination**
- 11.1 This Agreement shall commence on the date the Particulars were signed and dated and shall continue until terminated in accordance with the provisions of Clause 11.2 or 11.3 below.
- 11.2 With regard to Support the Agreement shall commence on the date that the Particulars were signed and dated and shall continue for an initial period stated in the Particulars or 12 months if not stated and shall automatically renew for periods of 12 months thereafter until terminated by either party giving to the other not less than three months notice.
- 11.3 Either Party may terminate this Agreement immediately at any time by written notice to the other Party if:
- (a) that other Party commits any material breach of its obligations under this Agreement which (if remediable) is not remedied within thirty (30) calendar days after the service of written notice specifying the breach and requiring it to be remedied; or
 - (b) that other Party:
 - (i) ceases to trade (either in whole, or as to any part or division involved in the performance of this Agreement);
 - (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that Party;
 - (iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that Party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court;
 - (iv) the ability of that Party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that Party's creditors accept, by Agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
 - (v) any process is instituted which could lead to that Party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).
- 11.4 On termination of this Agreement pursuant to Clause 03 above:
- (a) all licences granted by the Supplier under this

	Agreement may be terminated at the discretion of the Supplier;	14.2	Confidential Information may be disclosed by the receiving Party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
	(b) the Supplier shall promptly return all Materials to the Customer		
	(c) all provisions of this Agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect.	14.3	The obligations set out in this Clause 14 shall not apply to Confidential Information which the receiving Party can demonstrate:
		(a)	is or has become publicly known other than through breach of this Clause 14;
		(b)	was in possession of the receiving Party prior to disclosure by the other Party;
		(c)	was received by the receiving Party from an independent third party who has full right of disclosure;
		(d)	was independently developed by the receiving Party; or
		(e)	was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the Party subject to such requirement to disclose gives the other Party prompt written notice of the requirement.
12	<u>Change Control Procedure</u>	14.4	The obligations of confidentiality in this Clause 14 shall not be affected by the expiry or termination of this Agreement.
	All Changes shall be processed in accordance with the Change Control Procedure.	15	<u>Notices</u>
12.1	The Supplier and the Customer shall discuss any change to this Agreement (a " Change ") proposed by the other and such discussion shall result in either:	15.1	A notice given under this Agreement:
	(a) a written request for a Change by the Customer; or	(a)	shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
	(b) a written recommendation for a Change by the Supplier.	(b)	sent for the attention of the person, and to the address, fax number or e-mail address given in this Clause 15 (or such other person, address, fax number or e-mail address as the receiving Party may have notified to the other, such notice to take effect two (2) Business Days from the notice being received); and
	If neither the Customer nor the Supplier wishes to submit a request or recommendation, the proposal for the Change will not proceed.	(c)	shall be:
12.2	Where a written request for a Change is received from the Customer, the Supplier shall confirm the following details of the Change, including amendments (if required) to the :	(i)	delivered personally; or
	(a) Site Software;	(ii)	sent by fax or e-mail; or
	(b) Site Specification;	(iii)	sent by pre-paid first-class post or special delivery; or
	(c) Support; and	(iv)	registered airmail.
	(d) Charges and Payment Schedule,	15.2	The addresses for service of notice are:
	(the " Change Proposal ").	(a)	for the Customer:
12.3	The Customer shall:		the address set out in the Particulars.
	(a) review the Change Proposal and confirm in writing whether or not it accepts the Change Proposal; and	(b)	for the Supplier:
	(b) if appropriate, sign and return the Change Proposal to the Supplier.		Address: 25a High Street, Horncastle, Lincolnshire LN9 5HP For the attention of: Richard Giles / Mark Buckley Fax number: 01507 525 096 E-mail: richard@tjs.co.uk
12.4	Once signed by the Customer, in accordance with paragraph 12.3 of this clause 12:	15.3	A notice is deemed to have been received:
	(a) the Change Proposal shall be immediately effective; and	(a)	if delivered personally, at the time of delivery; or
	(b) the Customer and the Supplier shall perform their respective obligations on the basis of the agreed Change Proposal.	(b)	in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or
13	<u>Force Majeure</u>	(c)	in the case of pre-paid first class post, recorded delivery or registered post, two (2) Business Days from the date of posting; or
13.1	Neither Party:	(d)	in the case of registered airmail, five (5) Business Days from the date of posting; or
	(a) shall have any liability to the other for failure to fulfil its obligations under this Agreement to the extent that it is prevented from carrying them out by a Force Majeure Event; and	(e)	if deemed receipt under the previous sub-paragraphs of this Clause 15.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a Business
	(b) may terminate this Agreement unless a Force Majeure Event continues for more than three (3) months.		
13.2	A Party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this Agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue.		
13.3	The affected Party shall take reasonable steps to mitigate the effects of the Force Majeure Event		
14	<u>Confidentiality</u>		
14.1	Each Party shall protect the Confidential Information of the other Party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.		

Day), when business next starts in the place of receipt.

15.4 To prove service, it is sufficient to prove that the:

- (a) notice was transmitted by fax to the fax number or e-mail address of the relevant Party; or
- (b) in the case of post, that the envelope containing the notice was properly addressed and posted.

16 Publicity

All media releases, public announcements and public disclosures by either Party relating to this Agreement or its subject matter, including promotional or marketing material, shall be co-ordinated with the other Party and approved jointly by the Parties prior to release.

17 Assignment

Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

18 General

18.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person who is not a Party to this Agreement (including any employee, officer, agent, representative or sub-contractor of either Party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the Parties which agreement must refer to this Clause.

18.2 Nothing in this Agreement shall create or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties and no employee of either Party shall be deemed to be or have become an employee of the other Party.

18.3 This Agreement sets out the entire agreement between the Parties in relation to its subject matter and overrides any prior correspondence or representations. All warranties and conditions not set out in this Agreement whether implied by statute or otherwise are excluded to the extent permitted by law. Neither Party shall have any claim against the other for any misrepresentation unless such misrepresentation was made fraudulently.

18.4 Any variation to this Agreement must be in writing and signed by a duly authorised representative of each of the Parties to this Agreement.

18.5 The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision. Any waiver of any breach of this Agreement shall be in writing

18.6 If any provision of this Agreement is ruled to be invalid for any reason, that invalidity will not affect the rest of this Agreement which will remain valid and enforceable in all respects.

19 Governing Law and Jurisdiction

19.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.

19.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).