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## THE NOVUS AGENCY TERMS AND CONDITIONS

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These Terms and Conditions shall apply to the provision of services by The Novus Agency Ltd (“the contractor”), a company registered in England and Wales under number 12759704 whose registered office is at 19 Admirals Wharf, Lower Canal Walk, Southampton, SO14 3JQ to its clients (“the Client”).

### 1. Definitions

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

<b>“Code”</b>	means all computer programming code (both object and source, unless otherwise specified), as modified or enhanced from time to time by the contractor, including, without limitation, all interfaces, navigational devices, menus, menu structures or arrangements, icons, help, operational instructions, script, commands, syntax HTML, design, templates, and the literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access or otherwise affect the Content whether created or licensed from third parties by the Contractor including without limitation, any Intellectual Property Rights in such material;
<b>“Confidential Information”</b>	means any and all information relating to the Content, and any other information relating to the business interests of either party which is identified as being confidential at the time of disclosure or which could reasonably be expected to be confidential by its nature;
<b>“Content”</b>	means all text, graphics, animation, audio and/or digital video components and all other components of the Deliverables and the selection and arrangement thereof, other than the Code whether created by the Contractor for purposes of developing the Deliverables, including without limitation any Intellectual Property Rights therein;
<b>“Deliverables”</b>	means all Code, Content and other online materials to be produced by the Contractor hereunder;
<b>“Domain Name”</b>	the domain name which the registers;
<b>“Intellectual Property Rights”</b>	means all copyright and other intellectual property rights, howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, database rights, registered designs, rights in any format or presentation (including its look, feel, visual or other non-literal elements) and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world;

<b>“Optional Add-Ons”</b>	means the additional services provided by the Contractor that do not form part of the Packages and which are available to be purchased by the Client, as set out here: <a href="https://www.thenovusagency.com/">https://www.thenovusagency.com/</a>
<b>“Packages”</b>	means the three different website and hosting service level options (recruitment, financial and small business), as set out here: <b>Website Packages</b> <a href="https://www.thenovusagency.com/finance-websites/">https://www.thenovusagency.com/finance-websites/</a> <a href="https://www.thenovusagency.com/recruitment-websites/">https://www.thenovusagency.com/recruitment-websites/</a> <a href="https://www.thenovusagency.com/small-business-websites/">https://www.thenovusagency.com/small-business-websites/</a> <b>Hosting Packages</b> <a href="https://www.thenovusagency.com/hosting-and-support/">https://www.thenovusagency.com/hosting-and-support/</a>
<b>“Services”</b>	Website development and hosting services to be performed and the Deliverables to be produced by the Contractor for the Client, depending on the chosen Package and as agreed and set out in writing between the parties in our Client Order Form (including but not limited to the type of Package chosen by the Client and any applicable Option Add-Ons); and
<b>“Website”</b>	means the Client's website to be developed by the Contractor pursuant to this Agreement.

## 2. **Scope of Services**

- 2.1 The Contractor shall deliver the Services for the purpose of designing, establishing and hosting the Website and maintaining its accessibility and operability, in accordance with the terms of this Agreement.
- 2.2 At any time during this Agreement, the Contractor may request additional Optional Add-Ons in connection with the Website. Such additional work shall be agreed upon in writing by the parties.
- 2.3 The Contractor shall provide the Services with reasonable skill and care, commensurate with prevailing standards in this sector in the United Kingdom.
- 2.4 The average build time for a website is 5 business days after submission of the content and design form, subject to the Client's approval. This may vary depending on the complexity of a project and the Contractor's dedicated designer will provide the Client with a more accurate overall time scale during the course of the project. The Contractor agrees to use commercially reasonable efforts to complete the Services in a timely manner according to any deadline agreed upon in writing between both parties, but its obligations with respect to meeting any such deadlines may be subject to delays caused by unforeseen circumstances, by any voluntary action of the Client or of any third parties beyond the control of the Contractor. The Contractor agrees to notify the Client promptly of any event coming to its attention that may affect the Contractor's ability to meet any deadlines, or that is likely to cause any material delay in delivery of the Services.
- 2.5 Upon reasonable request by the Client, the Contractor shall update the Client on the status and progress of the Services, communicate and address any

problems that have come to the Contractor's attention, and put forward the Contractor's views as to how such problems may be resolved.

- 2.6 The Client shall furnish information requested by the Contractor and provide adequate access to personnel of the Client, to the extent reasonably necessary for the Contractor to fulfil its responsibilities under this Agreement. Any delays attributable to the Client's failure to respond to reasonable requests by the Contractor will extend any and all deadlines for an amount of time equal to the Client's delay. The Contractor shall not be in breach of this Agreement as a result of a reasonable delay in delivering the Services occurring for any reason.

### **3. Fees and Payment**

- 3.1 In consideration for the Services, the Client shall pay to the Contractor a fee depending on the website and hosting Package chosen by the Client.
- 3.2 a. Upon contract signing, 50% payment is due immediately to commence website design / development. Payments shall be made GBP or USD in cleared funds to such banks as the Contractor may from time to time nominate. On completion of the website, the final 50% payment is due before pushing the website live (subject to hosting / support Direct Debit mandate set up).
- b. All websites built by The Novus Agency Ltd are subject to a minimum 12 months hosting / support contract. All hosting / support fees are to be paid by Direct Debit (monthly or annually recurring). All hosting / support contracts are signed on a 12-month rolling contract, with a minimum of 30 days' written notice required for cancellation as stated in sub-clause 4.1
- 3.3 The Contractor may at any time change its prices following the Initial Period (as such term is defined in Clause 4.1), provided prior written notice is given to the Client. Where payment has already been made for a specified period, no further payment nor reimbursement shall be due and new fees shall take effect from the next payment due.
- 3.4 The Client may request a Package upgrade at any time. In the event that such requirements are changed, the Contractor shall adjust the fees due accordingly.
- 3.5 All fees payable by the Client to the Contractor shall be paid in full, without setoff or deduction. The Contractor reserves the right to suspend or terminate the Services if fees are not paid on or before the due date.
- 3.6 Any sums which remain unpaid following the expiry of the period set out in sub-Clause 3.2 of the Agreement shall incur interest on a daily basis at 4% above the base rate of The Bank of England from time to time until payment is made in full of any such outstanding sums.

### **4. Term and Termination**

- 4.1 This Agreement shall commence on the date when it has been signed by both parties. Unless terminated earlier in accordance with sub-Clause 3.5 or this clause, this Agreement shall continue for an initial period of 12 months (the "Initial Period") and shall continue, unless terminated earlier in accordance with this Agreement, until either party gives to the other party 30 days written notice to terminate, expiring on or after the final day of the Initial

Period.

- 4.2 Either party may terminate this Agreement by giving written notice to the other party if:
- 4.2.1 any sum owing to that party by the other party under any of the provisions of this Agreement is not paid within 30 days of the due date for payment;
  - 4.2.2 the other party commits any other material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
  - 4.2.3 the other party takes any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets, or ceasing or threatening to cease carrying on business.
- 4.3 For the purposes of Clause 4.2.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance.
- 4.4 The rights to terminate this Agreement given by this Clause 4 shall not prejudice any other right to remedy of either party in respect of the breach concerned (if any) or any other breach.

## 5. **Effects of Termination**

Upon the termination of this Agreement for any reason:

- 5.1 any sum owing by the Client to the Contractor under any of the provisions of this Agreement shall be immediately payable (including any sums due for the balance of any period of time before the expiry of the Initial Period or any extended period thereof) and the Client will pay the Contractor for all unpaid invoices and amounts up to the date of termination;
- 5.2 each party shall forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other party any documents in its possession or control which contain or record any Confidential Information;
- 5.3 all Clauses which, either expressly or by their nature, relate to the period after the termination of the Agreement shall remain in full force and effect; and
- 5.4 subject as provided in this Clause 5, and except in respect of any accrued rights, neither party shall be under any further obligation to the other.

## 6. **Hosting**

- 6.1 Subject to Clause 6.2, the Contractor shall be responsible for all aspects of hosting, operation, and maintenance of the Website. In connection with hosting the Website the Contractor shall:
  - 6.1.1 provide all facilities, equipment, online staff and services necessary to host, operate, manage and maintain the Website in accordance with the terms of this Agreement and all applicable laws and regulations;

- 6.1.2 configure, install, house, maintain, monitor and operate all computer equipment, server, software, network equipment and other components thereof, in a commercially reasonable manner designed to maximise the reliability and security thereof;
  - 6.1.3 use reasonable efforts to protect the Website from unauthorised interruptions, viruses and outside attacks (including, without limitation, by installing appropriate firewalls, backup systems and other protective devices);
  - 6.1.4 provide the Client with reasonable technical support via telephone and email in connection with the use of the Website and co-operate with the Client in directing customer support inquiries to the appropriate party.
- 6.2 The Client shall be responsible for providing the content for the Website and communicating any required additions and changes thereto. The Contractor shall not be required to upload new content or make alterations to existing content provided by the Client. The Contractor will not be responsible for reviewing the text, graphics, animation, audio and/or digital video components prior to uploading such content onto the Website. The Client shall ensure that the content shall be and remain fully compatible with the Website; provided, however, upon request from the Client, and at the Client's sole expense, the Contractor shall make commercially reasonable efforts to assist the Client in resolving any content related compatibility problem.
- 6.3 The Client shall be solely responsible for collecting any and all required sales, use and value added taxes and other governmental charges and duties from users of the Website.
- 6.4 The Contractor may publish credits, disclaimers or other materials on the Website as the Contractor reasonably deems appropriate. In addition, the Contractor shall have the right to review the Website from time to time and remove or edit content which, in its sole discretion, the Contractor considers offensive, libellous, obscene or otherwise unlawful or objectionable (including without limitation, hyperlinks, framed content or meta tags which the Contractor considers potentially infringing of third party intellectual property rights); provided, however, that the Contractor shall attempt to contact the Client prior to removing or editing such content. The parties will attempt to meet in good faith to resolve any such issues. If the parties are unable to resolve such issues or the Contractor is unable to contact the Client, after using reasonable efforts, the Contractor may remove such content in its reasonable discretion.

## **7. Rights in Content and Software**

- 7.1 Subject to Clause 7.2, all items and materials delivered by the Contractor to the Client hereunder, and all Intellectual Property Rights associated with any of the foregoing, shall be owned exclusively by the Client.
- 7.2 The Client's logos, trademarks, trade names, copyright materials and the Client's pre-existing original works of authorship contained in the Content remain the Client's sole property. The Contractor agrees that the service mark (e.g. "Client's Website,") uniform resource locator (URL) (e.g. [www.Client.com](http://www.Client.com)) and the IP numeric equivalent will be obtained by and remain the sole property of the Client. The Contractor agrees to identify the

Client's trademarks, copyrights and other Intellectual Property Rights in the Website by including appropriate symbols and notices as reasonably requested by the Client.

- 7.3 Subject to the terms and conditions of this Agreement, each party (the "Owner") hereby grants the other a non-exclusive, non-transferable (except with written permission from the Owner), non-sub-licensable, worldwide license to use, reproduce and/or modify the Owner's property, as described in this Agreement, solely in connection with the operation of the Website.
- 7.4 All rights in and to the Deliverables and any other items and materials delivered by the Contractor to the Client which are not expressly granted to the Client under Clause 7.3 above are reserved to the Contractor. Without limiting the generality of the foregoing, the Client shall not, and shall not assist, authorise or encourage any third party to:
  - 7.4.1 use or transmit any Deliverables on or to any other website or network not owned by the Contractor,
  - 7.4.2 reverse engineer, decompile, disassemble any Deliverables or otherwise attempt to discover any Source Code or trade secrets related to any Deliverables;
  - 7.4.3 distribute, license, rent, sell, lease or otherwise transfer any Deliverables;
  - 7.4.4 modify or create derivative works based on any Deliverables; or
  - 7.4.5 remove, obscure or alter any notice of copyright, trademark or other proprietary notices present on or in any Deliverables.

## 8. **Confidentiality**

- 8.1 Each party agrees and undertakes that it will, and will procure that its employees and agents will, keep all Confidential Information confidential and will not disclose it in whole or in part to any third party, nor use Confidential Information for any purpose other than the performance of its obligations under this Agreement except with the express written consent of the other. This provision shall survive the termination of this Agreement howsoever caused for a period of five (5) years commencing on the date of such termination.
- 8.2 Confidential Information shall not include information which:
  - 8.2.1 at or prior to the time of disclosure was known to the receiving party except to the extent that such information was obtained unlawfully or by a breach of confidentiality;
  - 8.2.2 at or after the time of disclosure becomes generally available to the public other than through any act or omission on the part of the receiving party;
  - 8.2.3 is independently developed by the receiving party; or
  - 8.2.4 is required to be disclosed by law, by a court order or by any competent government or regulatory authority.

## 9. **Representations, Warranties, Limitations and Indemnity**

The following representations and warranties are provided solely for the benefit of the

parties to this Agreement, and no other person or entity.

- 9.1 The Contractor warrants that (i) the Deliverables and software it creates or licenses to the Client shall perform reasonably and (ii) it will perform the Services in compliance with applicable law.
- 9.2 The Contractor warrants that any part of the Client's Website and Content developed solely by the Contractor:
  - 9.2.1 will be original and will not infringe on any patent, copyright, trade secret or other proprietary rights of others; and
  - 9.2.2 will not be defamatory to any third party or violate any third parties rights of privacy or publicity.
- 9.3 The Client warrants that no part of the Website, including all related materials and Content provided by the Client in the production of the Deliverables:
  - 9.3.1 infringes on any Intellectual Property Rights of others; or
  - 9.3.2 is defamatory to any third party or violates any third parties rights of privacy or publicity.
- 9.4 The Client warrants that it is the owner of all rights in, or has obtained any written permission necessary to authorise the Contractor's use pursuant to this Agreement of, any part of the Website, materials and content provided by the Client.
- 9.5 The Client shall be solely responsible for the adequacy and accuracy of all Content, information and data provided to the Contractor. The Client shall review the accuracy of all Content, information and data once the Contractor has included the same in the Website. The Client shall be solely responsible for the Content and information within the Website. The Contractor shall not be responsible for screening, policing, editing, or monitoring any content, or additional materials added by the Client or any third party to any Deliverable or included Services. If notified of allegedly infringing, defamatory, damaging, obscene, illegal or offensive material, the Contractor's sole obligation will be to inform Client of such allegations.
- 9.6 The Client shall defend, indemnify and hold the Contractor harmless from all liability and expenses (including, but not limited to attorneys fees) arising from such claim unless said liability is due to gross negligence or a wilful default by the Contractor in carrying out its obligations under this Agreement.
- 9.7 Each party has full power to enter into this Agreement, to carry out its obligations under this Agreement and to grant the rights described herein to the other party.
- 9.8 The Contractor does not warrant any Deliverable or included Services against failure of performance due to failure of computer hardware or communication systems for whatever reason other than the Contractor's default. Except as specifically provided in this Clause, the Contractor hereby disclaims and the Client hereby waives all other warranties, express or implied, with respect to the Deliverables and all services provided hereunder, arising by law or otherwise, including without limitation:

9.8.1 any implied warranty of merchantability, fitness for a particular purpose non-infringement or arising from course of dealing, course of performance or usage of trade; and

9.8.2 any obligation, liability, right, remedy, claim in tort, notwithstanding any fault, negligence, strict liability or product liability of the Contractor.

## 10. Remedies

In addition to its rights of termination, the Client's exclusive remedies for the Contractor's default hereunder shall be to obtain the repair, replacement or correction of the defective Services, software or equipment. If such remedy is not economically or technically feasible or effective, then the Client may obtain an equitable partial or full credit or refund of amounts paid with respects to the defective Services, subject to the limitation set forth immediately below.

## 11. Liability

11.1 Except as expressly provided in this Agreement the Contractor shall not be liable to the Client or any third party, whether in contract, tort (including negligence) or otherwise for:

11.1.1 any amount in excess of the amount paid by the Client to the Contractor for any services during the six (6) months prior to the event giving rise to the alleged claim; or

11.1.2 any loss of revenue, business contracts, anticipated savings or profits, or any loss of use of facilities; or

11.1.3 any special indirect or consequential loss howsoever arising.

## 12. Force Majeure

12.1 For the purposes of this Agreement "Force Majeure" means in relation to either party, any circumstances beyond the reasonable control of that party (including, without limitation, acts of god, industrial action, civil disturbances, disruption of telecommunications, power or other utilities, or interruption or termination of security of the Internet access provider being used by the Contractor to link its services to the Internet).

12.2 If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under this Agreement, it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

12.3 Neither party shall be deemed to be in breach of this Agreement, or shall otherwise be liable to other, by reason of any delay in performance, or the non-performance, of any of its obligations under, to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

## 13. Notices and Service

13.1 Notices sent under this Agreement must be in writing (which includes email). The addresses for sending notices are the addresses given at the beginning of this agreement, or such other addresses as may be notified by one part to the other from time to time.

13.2 Any notice or information given by post which is not returned to the sender as

undelivered shall be deemed to have been given at the time of delivery if it is delivered personally, within 48 hours of posting if it is sent by first class or recorded post, or on the date of transmission if sent by email.

**14. Miscellaneous**

- 14.1 Each party shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.
- 14.2 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 14.3 Nothing in this Agreement shall create, or be deemed to create, a partnership, an employment relationship or the relationship of principal and agent, between the parties.
- 14.4 This Agreement contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 14.5 Each party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 14.6 No failure or delay by either party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 14.7 If any provision of this Agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 14.8 This Agreement may be executed in a number of counterparts and shall come into force once each party has executed such a counterpart in identical form and exchanged the same with the other party.
- 14.9 The laws of England and Wales shall apply to the whole of this Agreement. The parties hereby agree to submit to the exclusive jurisdiction of the English and Welsh courts.