

TERMS & CONDITIONS

INTRODUCTION

The following Terms apply to all products and services provided by Think Create Digital Ltd (hereinafter referred to as THINK) and in the event of any dispute are governed by the laws of England.

In these Terms “we” refers to THINK and “you” refers to you and any company or principals for whom you may be acting and (if applicable) your/their assured(s) or member(s). These Terms, along with any accompanying proposal (“Proposal”), set out the Terms upon which we will provide web design and or digital coding services (“Services”) to you. They supersede and replace any Terms which may have been previously discussed or agreed with you in relation to the Services and all work is carried out by THINK on the understanding that you have agreed to our Terms.

ACCEPTANCE

It is not necessary for you to have signed an acceptance of these Terms for them to apply. If you accept our Proposal then you will be deemed to have satisfied yourself as to the terms applying and have accepted these Terms in full.

Please read these Terms carefully. Any purchase or use of our Services implies that you have read and accepted our Terms which are available at www.thinkcreatedigital.com

PROJECT ACCEPTANCE

THINK will provide you with a written Proposal including the Services to be provided to you and an estimate or quotation (if applicable) by email.

A copy of the Proposal is to be signed and dated by you to indicate acceptance and should be returned to THINK, if you fail to do so, but continue to instruct us in relation to the Services as set out by the Proposal, you will be deemed to have accepted the Proposal and these Terms in full.

BASIS OF OUR CHARGES

This clause applies subject to any agreement to the contrary set out in the Proposal.

Our charges will be based upon the time spent in dealing with the relevant project and Services set out in the Proposal. This may include time spent in researching technical functions, code, plugins, server analysis, travelling, administration, regulatory compliance matters and preparing invoices.

We are entitled to be paid for all work we do for you in accordance with the Proposal and these Terms. They do not constitute an “entire contract” such that our entitlement to be paid only arises on completion of the work. Our costs accrue as time is spent and recorded and will be invoiced accordingly.

Each individual is charged at an hourly rate which is reviewed on a periodic basis. Our current charging rates for the Services are as set out in the Proposal.

We reserve the right to vary these rates from time to time. Such rates are normally varied with effect from 1 July in each year, and any rates specified to you will be valid unless and until so varied. Details of our future rates will be notified to you promptly.

Invoices are calculated based upon units of fifteen minutes, rounded up to the nearest whole multiple of fifteen minutes.

In addition we may consider other factors such as the complexity, difficulty or novelty of the project, the specialist expertise involved, the degree of urgency or importance and the need to work antisocial hours. All or any of these factors may affect the fees charged by an additional percentage being added to the hourly rate.

Regardless of whether we agree to seek payment or contribution from any third party, it is ultimately your responsibility to discharge our invoice.

Charges for Services exclusively for design work to be provided by THINK will be set out as a written estimate or quotation that is provided in the Proposal. Unless agreed otherwise with you, all design works require an advance payment of a minimum of fifty (50) percent of the project quotation total before the work commences or is supplied to you for review. The remaining fifty (50) percent of the project quotation total will be due upon completion of the work prior to upload to the server or release of materials.

INVOICING PROCEDURE

Unless otherwise agreed in the Proposal, we have the right to render invoices to you monthly in arrears.

OUT-OF-POCKET EXPENSES

When handling a project for you, we may need to pay out-of-pocket expenses on your behalf. These may include fees of experts, third party plugins, server charges, library's, courier charges and telephone expenses incurred on your behalf.

We take your initial instructions to us in any matter as your authority for us to incur reasonable out-of-pocket expenses in the conduct of the Services. In addition, where out-of-pocket expenses will be substantial, we may need to ask you for money on account before we incur any liability.

Details of out-of-pocket expenses we have paid or are committed to pay on your behalf will appear in our invoice under the heading "Disbursements". Some of these out-of-pocket expenses may carry a charge to VAT.

We are able to meet the majority of your printing, copying and scanning requirements, including the preparation of DVD or CD-ROM "bibles" of copy documents, in-house or through our authorised supplier facility. When we provide these services ourselves or through that facility, the costs will be itemised separately and invoiced to you.

Typically, internal costs for A4 black and white prints and copies currently stand at 15p per sheet (with reductions for bulk printing and copying), although this depends on complexity and is subject to annual review. Details of our internal costs for other types of copies and other services can be supplied on request. When it is necessary for us to use outside suppliers, their charges will be included in our invoice as a separate Disbursement.

VAT

Any figure given by way of estimate, quotation, hourly rate or other cost or charge, whether in the Proposal or in these Terms, is exclusive of VAT. Our VAT number is GB 317122733.

We will generally be obliged to charge VAT on our fees and on most disbursements at the rate from time to time in force. Where any work is not subject to VAT, we will specifically confirm this to you. Unless you have received such confirmation, VAT will be chargeable.

We are happy to discuss the VAT position on matters which have an overseas element.

PAYMENT OF OUR INVOICES

Our invoices are payable on delivery.

If any invoice owed to us remains outstanding, we reserve the right to charge interest on the outstanding amount (including VAT and any out-of-pocket expenses) from the date of our invoice at 4% per annum above Barclays Bank PLC base rate from time to time. We will also be entitled to suspend or terminate the provision of the Services and to retain all designs, coding, documents and papers belonging to you, together with our own records, until all amounts that you owe to us are paid.

Where we work for you on more than one project, or for you and persons connected with you in relation to the same or different projects, we reserve the right to transfer unbilled work in progress balances on closed or dormant projects onto current projects so that they can be billed more conveniently.

All invoices are payable without discount, deduction, withholding, set-off or counterclaim. If you are required by law to make any deduction or withholding from any payment, you shall do so, and the sum due in respect of such payment will be increased to ensure that we receive and retain a sum equal to the amount which we would have received and retained had no such deduction or withholding been required.

If you pay all or part of an invoice in a currency other than the currency in which it was issued, we reserve the right to charge you for the full cost of converting that payment into the currency in which the invoice was issued.

If an invoice is issued in a currency other than sterling, we reserve the right to charge you for any loss caused by a change in the exchange rate between that currency and sterling between the date of the invoice and the date of payment.

Payments are to be made by online transfer only.

Publication and/or release of work performed by THINK for you, may not take place until cleared funds have been received.

An account shall be considered default if it remains unpaid for 30 days from the date of invoice. In such circumstances, THINK shall be entitled to remove its and/or your material from any and all computer systems, until the amount due has been fully paid. This includes any and all unpaid monies due for the Services, including, but not limited to, hosting, domain registration, search engine submission, design and maintenance, sub-contractors, printers, photographers and libraries.

Removal of such materials does not relieve you of your obligation to pay the due amount.

Customers whose accounts become default agree to pay all THINK 's reasonable legal and accounting expenses and third party collection agency fees in the enforcement of the debt and these Terms.

SOURCE FILES

We will supply you with proofs and PDF files as appropriate for printing, or other graphic files as detailed in the job scope or request.

Charges for design work do not cover the release of our copyright design source files, including but not restricted to indd, psd, AI, png, fla or other source files or raw code; if the Client requires these files for transfer to an in-house or other designer, they will be subject to a separate quotation or 'buy-out' charge.

COPYRIGHTS AND TRADEMARKS

Copyright is retained by THINK on all design work including words, pictures, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled.

If a choice of designs is presented and one is chosen for your project, only that solution is deemed to be given by us as fulfilling the scope of works. All other designs remain the property of THINK, unless specifically agreed in writing.

By supplying text, images and other data to THINK for inclusion in the website, platform or other medium, you declare that you hold the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with you, or rightful copyright or trademark owner.

Any artwork, images, or text supplied and/or designed by THINK on your behalf, will remain the property of THINK and/or its suppliers unless otherwise agreed in writing. A non-exclusive, perpetual, royalty-free licence for use of the copyright material is granted to you solely for the project defined in the Services and not for any other purpose.

You may request in writing from THINK, the necessary permission to use materials (for which THINK holds the copyright) in forms other than for which it was originally supplied, and THINK may, at its discretion, grant this and may charge for the additional usage. Such permission must be obtained in writing before any of the aforesaid artwork, images, text, or other data is used.

Any software, code, plugin or other third party material used in a platform, website or digital project remains the property of the creator and any ongoing licence fees or fees for upgrades are the responsibility of you, not THINK.

By supplying images, text, or any other data to THINK, you grant THINK permission to use this material freely in the pursuit of the Services.

Should THINK, or you supply an image, text, audio clip or any other file for use in a website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, you will agree to allow THINK to remove and/or replace the file on the site.

You agree to fully indemnify and hold THINK free from harm in any and all claims resulting from you not having obtained all the required copyright, and/or any other necessary permissions.

ALTERATIONS

You agree that any changes required over and above the agreed Services, or where you make changes to the supplied copy or changes required to be carried out after acceptance of the draft design or technical specification, will be liable to a separate charge.

You also agree that THINK holds no responsibility for any amendments made by any third party, before or after a design is published.

LICENSING

Any design, copywriting, drawing, idea or code created for you by THINK, or any of its contractors, is licensed for use by you on a non-exclusive, perpetual, royalty-free licence that may not be modified, re-used, or re-

distributed in any way or form without the express written consent of THINK and any of its relevant sub-contractors.

All design work – where there is a risk that another party make a claim, should be registered by you with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use. THINK will not be held responsible for any and all damages resulting from such claims.

THINK is not responsible for any loss, or consequential loss, non-delivery of products or services, of whatever cause and you agree not to hold THINK responsible for any such loss or damage.

Any claim against THINK shall be limited to the relevant fee(s) paid by you.

DATA FORMATS

You agree to THINK's definition of acceptable means of supplying data to you.

Text is to be supplied to THINK in electronic format as standard text (.txt), MS Word (.docx) or via e-mail / FTP or shared folder.

Images which are supplied in an electronic format are to be provided in a format as prescribed by THINK via e-mail / FTP. Images must be of a quality suitable for use without any subsequent image processing, and THINK will not be held responsible for any image quality which you later deem to be unacceptable.

THINK cannot be held responsible for the quality of any images which you wish to be scanned from printed materials.

Additional expenses may be incurred for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing, or data entry services, colour correction and alteration of images

DESIGN PROJECT DURATION

Any indication given by THINK of a project's duration is to be considered by you to be an estimation. THINK cannot be held responsible for any project over-runs, whatever the cause. Estimated project duration should be deemed to be from the date that cleared funds are received by THINK for the initial payment or by date confirmed in writing by THINK.

RIGHTS OF ACCESS FOR WEBSITE CONSTRUCTION

You agree to allow THINK all necessary access to computer systems and other locations, as required, in order to complete a website project and until all due funds are cleared, including the necessary read/write permissions, usernames and passwords.

You also agree to allow THINK access to any computer systems, usernames and passwords required to remove data and/or sites for failure to comply with these Terms.

You agree to supply THINK with all necessary materials, electronic, or otherwise, required to create and complete the project, and to supply them in a timely manner.

PROJECT COMPLETION

THINK considers a project complete upon receipt of a signoff email from you. If no signoff email is received in writing from you, within 14 days from delivering all Services outline in the Proposal, THINK will consider the project as completed. Other services such as printing, display panel production, film work, website uploading, publishing, maintenance, server updates, handover etc either contracted on your behalf constitute a separate project and can be treated as a separate charge.

WEBSITE, CRM AND APP DESIGN ONLY

THINK requires that a template is approved by you before coding of a platform commences. Once the template(s) for the platform are approved by you, coding will commence; any changes to navigation items, colours, structure or content that require changes to the template will incur an additional charge.

Once the platform design is complete, THINK will provide you with the opportunity to review the resulting work. THINK will make one set of minor changes at no extra cost within 14 days of the start of the review period. Minor changes include small textual changes and small adjustments to placement of items on the page. It does not include changes to images, colour schemes or any navigation features. Any minor changes can be notified to THINK by e-mail. THINK will consider you have accepted the original draft, if no notification of changes is received in writing from you, within 14 days of the start of the review period.

HOSTING WEBSITES

THINK offers a limited hosting service through an out-sourced virtual server. THINK does not guarantee continuous service and will accept no liability for loss of service, whatever the cause.

THINK may request that you change the type of hosting account used if that account is deemed by THINK to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the website. Fees for hosting on THINK's virtual server are due at the commencement of any period of service and are non-refundable.

Fees due to third party hosting organisations are the responsibility of the client and THINK are not liable for their payment, nor for the renewal of domain names, which are the sole responsibility of you / domain owner.

DOMAIN REGISTRATION

THINK cannot guarantee the availability of any domain name. Where THINK is to register a domain name on behalf of you it will endeavour to do so but you should not assume a successful registration.

SEARCH ENGINE SUBMISSION

Due to the infinite number of considerations that search engines use when determining a site's ranking, THINK cannot guarantee any particular placement. Acceptance by any search engine cannot be guaranteed and when a site is accepted, the time it takes to appear in search results varies from one search engine to another. Rankings will also vary as new sites are added. THINK recommend that you use a professional SEO company and are happy to provide details of such companies, but accept no responsibility for their services.

DESIGN CREDITS

You agree to allow THINK to place a small credit on new websites, platforms, apps, CRMs, printed material exhibition displays, advertisements and/or a link to THINKs own website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page. You also agree to allow THINK to place websites and other designs, along with a link to your site on THINK's own website for demonstration purposes and to use any designs in its own publicity and portfolios.

RIGHTS OF REFUSAL

THINK will not include in its designs, any text, images or other data which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. THINK also reserves the right to refuse to include submitted material without giving reason. In the situation where any images and/or data that THINK does include in all good faith, and subsequently discovers is in contravention to such Terms, you are obliged to allow THINK to remove the contravention without hindrance, or penalty. THINK is to be held in no way responsible for any such data being included.

CANCELLATION

Cancellation of orders may be made initially by telephone contact, or e-mail. You will then be invoiced for all work completed over and above the non-refundable deposit that will have been made at the time of first ordering. The balance of monies due must be paid within 30 days. Please note: any cancellation which is not formally confirmed in writing and received by THINK within 14 days of such instruction being issued, will be liable for the full quoted cost of the project.

NON-SOLICITATION OF STAFF

You agree that during the term of the project and for an additional period of 12 months after termination of the Services, you will not directly or indirectly canvas with a view to offering or providing employment to, offer to contract with or entice to leave any employee of or contractor to THINK engaged in the performance of the Project without the prior written consent of the THINK.

DISCLAIMER

THINK makes no warranties of any kind, express or implied, for any and all products and/or services that it supplies. THINK will not be held responsible for any and all damages resulting from products and/or services it supplies. THINK is not responsible for any loss, or consequential loss of data, or non-delivery of products or services, of whatever cause. While we take reasonable steps to investigate the materials we recommend, we accept no responsibility for the performance or quality of materials or any consequential loss arising from their failure. You agree not to hold THINK responsible for any such loss or damage. Any claim against THINK shall be limited to the relevant fee(s) paid by you.

THINK reserves the right to use the services of sub-contractors, agents and suppliers and any work, content, services and usage is bound by their Terms. THINK will not knowingly perform any actions to contravene these and you also agree to be so bound.

THINK and its clients agree to comply with Printers Terms which include disclaimers for non-completion on time and the flexibility to supply quantities within 10% of the total ordered. THINK recommend that if an exact quantity is required, then 10% extra is added to the quantity and extra time made available should the job be delayed.

LIABILITY

Notwithstanding any other provision in these Terms, THINK's liability to you for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.

THINK's entire liability to you in respect of any breach of its contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with these Terms shall be limited to the relevant fee(s) paid by you.

THINK shall not be liable to you for any indirect or consequential loss you may suffer even if the loss is reasonably foreseeable or THINK was advised of the possibility of you incurring it.

DATA PROTECTION

We comply with applicable data protection and privacy laws. We shall each be considered an independent data controller in relation to any personal data provided to us by you or on your behalf. Please refer to our privacy notice at www.thinkcreatedigital.com/privacy-notice ("Privacy Notice" – also available on request) for information about what we do with personal data relating to you and how you may request a copy of, or change to, the personal data that we hold about you.

You shall only disclose personal data to us where (i) you have provided the necessary information to the relevant data subjects regarding its use (and you may use or refer to our Privacy Notice for this purpose); (ii) you have a lawful basis upon which to do so, which, in the absence of any other lawful basis, shall be with the relevant data subject's consent; and (iii) you have complied with the necessary requirements under data protection legislation to enable you to do so.

CONFIDENTIALITY

During the term of the project, and after termination or completion for a period of 12 months, the following obligations shall apply to the party disclosing Confidential Information ('the Disclosing Party') to the other party ('the Receiving Party').

The Receiving Party:

May not use any Confidential Information for any purpose other than the performance of its obligations under this agreement;

May not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party; and

Shall make every effort to prevent the use or disclosure of the Confidential Information.

The obligations of confidence referred to in the provisions of this clause shall not apply to any Confidential Information that:

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;

Is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

Is required to be disclosed by any applicable law or regulation; or

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 other party to these Terms in respect of it and who imposes no obligations of confidence upon the Receiving Party.

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.

The obligations of the parties under the provisions of this clause shall survive the expiry or the termination of these Terms for whatever reason.

GENERAL

These Terms supersede any previous Terms, contract or verbal agreement distributed in any form. THINK reserves the right to change any rates and any of the Terms at any time and without prior notice.

JURISDICTION AND PROPER LAW

These Terms and the Proposal are subject to English law and, if you are contracting us as a consumer, you and we irrevocably agree to submit to the exclusive jurisdiction of the Courts of England and Wales. If you are not contracting us as a consumer, you and we irrevocably agree to submit to either the jurisdiction of the High Court of England and Wales or arbitration in London at our sole discretion and option.

SEVERABILITY

In the event any one or more of the provisions of these Terms shall be held to be invalid, illegal or unenforceable, the remaining provisions of these Terms shall be unimpaired and the Terms shall not be void for this reason alone. Such invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable valid, legal and enforceable provision, which comes closest to the intention of the parties underlying the invalid.

ACCEPTANCE OF TERMS

The placement of an order for design and/or any other services offered by THINK, by email, verbally or in writing, is deemed to be acceptance of these Terms, which are freely available at www.thinkcreatedigital.com

1st July 2019

