



## **APPLICATION DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** is made on the

**BETWEEN:**

- 1)** Big Orange Software Ltd a company registered in England under registered company number 6365359 whose registered office is at 31-37 Church Street, Reigate, Surrey. RH2 8PP. (The Supplier)
- 2)** The company or individual requesting the services of Big Orange Software. (The Client)

**WHEREBY IT IS AGREED** as follows:

1. The Client will purchase and the Supplier will supply the goods and/or perform the work specified in the signed proposals or schedule of work
2. This Agreement is subject to English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.

## Big Orange Software

### Terms & Conditions

#### 1. Definitions

- 1.1. “Goods” and “Services” shall mean the Goods and Services to be delivered by the Supplier to the Client in accordance with this Agreement and the Proposal.
- 1.2. “Intellectual Property Rights” means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.3. “User Acceptance Testing Period” and “UAT Period” shall mean a period of 30 (thirty) days after release of the Application into a live environment, during which the Client may test the app in a live environment and report issues encountered to the Supplier for resolution.

#### 2. Terms & Conditions

- 2.1. This Agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of the Agreement.
- 2.2. This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 2.3. The Courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings and to settle any disputes including non-contractual disputes which may arise out of or in connection with this Agreement and, for such purposes, each Party irrevocably submits to the jurisdiction of the Courts of England.

#### 3. The Services

- 3.1. The Goods and/or the Services must conform in all respects with the drawings specifications and other requirements or descriptions stated in the Proposal.
- 3.2. All Goods must be of satisfactory quality and fit for purpose and shall be equal in all respects to relevant samples or patterns provided by or accepted by the Client.
- 3.3. All Services must be performed to the highest standard that might reasonably be expected from a supplier skilled and experienced in providing services of the same nature of the Services who is acting prudently. The products of any Services must be free from all defects including (to the extent if any that You are responsible for design), defects in design.
- 3.4. The Client shall have the right to inspect the Goods and/or the Services. Following which the Client shall be entitled to reject all Goods and/or Services which do not conform completely in every respect with the Proposal or are not fit for purpose and the Supplier shall make good any defects discovered and reported during the testing period with the exception of defects arising from materials provided by the Client.

- 3.5. Any inspection checking approval or acceptance given on our behalf shall not relieve the Supplier from any obligation under the Agreement.
- 3.6. Any Goods and/or Services rejected must at the Clients request be replaced or re-performed as the case may be by the Suppliers expense.
- 3.7. The Supplier will ensure that in all respects the Goods and/or the Services comply with all relevant requirements of any statute statutory rule or order or other instrument having the force of law which may be in force when the Goods are delivered and/or the Services performed as the case may be.

#### 4. Term and termination

- 4.1. The Agreement shall commence on the signing of the proposal and shall remain in force unless terminated by either party on thirty days written notice. Where the Client terminates this agreement during the development of the Application software the Client shall pay the Supplier for all Services carried out by them up to the date of termination in accordance with the price and terms as stipulated in the Agreement.
- 4.2. Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving notice to the other if:
  - 4.2.1. the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - 4.2.2. the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or enters into an agreement with its creditors; or
  - 4.2.3. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 4.3. there is a change of control of the other party.
- 4.4. If either party is delayed or prevented from performing their obligations under the Agreement by circumstances beyond its reasonable control (including without limitation any form of government intervention strikes and lock-outs relevant to the Agreement or breakdown of plant) such performance shall be suspended and if it cannot be completed within a reasonable time the Agreement may be cancelled by either party.
- 4.5. Notices of termination must be made in writing, which in this case shall be satisfied by postal mail or email. Notices of termination via email that are addressed to:
  - 4.5.1. For the Supplier: [enquiries@bigorangesoftware.com](mailto:enquiries@bigorangesoftware.com)
- 4.6. In the event of Termination by either party following the development of the Application the Supplier shall provide the Client with all necessary information, software and codes to transfer the maintenance of the Application to another supplier and shall on the request and at the expense of the Client place such codes in an escrow account.

#### 5. Intellectual Property Rights

- 5.1. The Supplier warrants that neither the code produced nor any imagery sourced for the Client will infringe any Intellectual Property Rights or any other legal or equitable right of any person.
- 5.2. The Supplier shall indemnify the Client against all actions costs claims demands expenses and liabilities whatsoever resulting from any actual or alleged infringement as mentioned in Condition 5.1
- 5.3. Each party shall be entitled to retain all Intellectual Property Rights that are owned by it which are in existence prior to commencement of the Services, or which are or licensed to it by a third party.
- 5.4. The Supplier shall grant the Client an irrevocable, royalty free licence to use the Intellectual Property rights that are retained under condition 5.3 above to enable the Client to properly use the products of the Services.
- 5.5. Save for the Intellectual Property Rights that are to be retained under condition 5.3, the Supplier hereby agrees to assign to the Client, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services.
- 5.6. The Supplier cannot take responsibility for any copyright infringements caused by materials submitted by the Client and reserves the right to refuse any material of a copyrighted nature unless adequate proof is given of permission to use such material. The Supplier will ensure that appropriate licences are obtained for any materials sourced by them.
- 5.7. The Client agrees to make available as soon as is reasonably possible to the Supplier a content specification of all materials required to complete the application to the agreed standard and within the set deadline.

## 6. Data protection

- 6.1. The Supplier warrants that, to the extent it processes any Personal Data on behalf of the Client:
  - 6.1.1. it shall act only on instructions from the Client; and
- 6.2. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.
- 6.3. In this clause 6, Personal Data has the meaning given in the Data Protection Act 1988

## 7. Confidential Information

- 7.1. 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.
- 7.2. 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.
- 7.3. Confidential Information shall exclude information which is:
  - 7.3.1. Trivial or obvious;
  - 7.3.2. Already in the public domain or comes into the public domain other than by reason of a breach of the Agreement; or
  - 7.3.3. Which is required to be disclosed by law or a relevant court order.

## 8. The Application.

- 8.1. The parties undertake to agree a full project specification in accordance with this Agreement and the Proposal.
- 8.2. The Supplier will not be liable or become involved in any disputes between the Client and the end users and cannot be held responsible for any wrong doing on the part of the Client
- 8.3. The Supplier will use reasonable best endeavours to ensure consistent availability of all Services.
- 8.4. The parties acknowledge that the Application being developed for the Client is for the ultimate benefit of the end users. Therefore whilst the Supplier may have no liability to the end user they acknowledge that complaints made by them as to the functionality or service of the Application must be addressed and notified to the Client.
- 8.5. A deposit of 40% is required with any project before any work will be carried out.
- 8.6. Once an application has been designed and completed the final balance of payment is then due in accordance with the Suppliers payment terms. There are no exceptions to this, i.e If the client decides they no longer want the site, as they have commissioned the work and paid a deposit they are still obliged to pay for the work that has been done.

#### 9. Database, Application and E-Commerce Development

- 9.1. The Supplier cannot take responsibility for any losses incurred by the use of any software created for the client except where arising from their own negligence.

#### 10. Compatibility

The Supplier shall use reasonable care and skill to ensure that any developed/designed site or application will function correctly on the operating system specified or the server it is initially installed in

#### 11. Client's Duties

- 11.1. The Client shall ensure that the specific representation of its application and the content of the documents to be processed and created is not pornographic, sexist, extremist, or a glorification of violence, and that such content does not violate third party rights.
- 11.2. The Client shall provide the Supplier with all necessary information and data required to perform Services and shall take all measures that are required to perform services within the realm of its responsibility.
- 11.3. The parties shall use all reasonable endeavours to inform the other immediately of the purging, sale, lease or transfer to a new owner of a domain that is the subject matter of an agreement.

#### 12. Payment of Accounts

- 12.1. A deposit is required from any new Client before any work is carried out. It is the The Supplier's policy that any outstanding accounts for work carried out by The Supplier or its affiliates are required to be paid in full, no later than 30 days from the date of the invoice unless by prior arrangement with The Supplier.
- 12.2. Once a deposit is paid and work completed you are obliged to pay the balance of payment in full. We will contact clients via email and telephone to remind them of such payments if they are not received when due.
- 12.3. In the event of The Supplier has completed the designing part of the work and that the completion of the website is dependent on materials submitted by the client. The Supplier shall

reserve the right to invoice the client for the work done. This payment shall be paid no later than 30 days from the date of invoice unless prior arrangement with The Supplier.

12.4. If accounts are not settled or The Supplier have not been contacted regarding the delay, access to the related website may be denied and web pages removed, we will then pass such cases to the Small Claims Court to pursue payment, non payment can result in county court judgements (ccj's) being added to the clients credit rating.

12.5. Following consistent non payment of an invoice our Solicitors will contact the client in question, with a view to taking the matter further and if need be to seek payment through legal procedures, and if necessary court summons.

### 13. Liability

13.1. Neither party shall be liable to the other for (i) death or personal injury caused by negligence (ii) fraud or fraudulent misrepresentation; or (iii) any other liability that cannot be excluded or limited by law.

13.2. The Client shall not be liable to the Supplier in contract, tort (including negligence) under statute or otherwise.

13.2.1. In the event that the Client is found to be liable to the Supplier the Client's total liability to the Supplier in any year shall be limited to the amount due to the Supplier by the Client in terms of this Agreement for that year.

### 14. Assignment

14.1. The Supplier may not assign or transfer this order or part thereof or the Agreement to any other person without the Clients written consent.

### 15. Variation

15.1. No variation of the Agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

### 16. Waiver

16.1. Failure to exercise, or any delay in exercising, any right or remedy provided under the Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

### 17. Severance

17.1. If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

17.2. If a provision of the Agreement (or part of any provision) is found illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

17.3. Nothing in this clause shall limit or exclude any liability for fraud.

### 18. Assignment

Neither party may assign or transfer any of its rights or obligations under this agreement without giving reasonable prior notice to the other party.

#### 18.1. No Partnership or Agency

18.2. Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

#### 19. Dispute Resolution

19.1. If any dispute arises in connection with the Agreement the parties shall following a written request from one party to the other, meet in good faith to resolve the dispute before resorting to legal action.

#### 20. Third Party Rights

20.1. A person who is not a party to this Agreement shall not have any rights under or in connection with it.

#### 21. Informal Complaints Procedure

21.1. The Client shall raise any complaints received by end users directly by email to the Supplier, giving sufficient information to locate the material (such as an url) and clearly outlining the grounds for complaint. The Supplier will endeavour to respond to the Client and rectify the subject matter of the complaint within 3 working days where the work is covered by a maintenance agreement.

#### 22. Formal complaints procedure

22.1. The formal complaints procedure should only be used where the complainant feels that the nature of the complaint is too serious to be dealt with informally, or where a satisfactory conclusion has not been reached after following the informal procedure.

22.2. A formal complaint should be made in writing to the Supplier who will acknowledge receipt and ensure that the matter is looked into as soon as possible.

22.3. An initial response to any complaint can be expected within seven days of its receipt; a full and considered response to the complaint should be completed within 30 days and any subsequent remedy implemented with the minimum of delay.