



## General Terms and Conditions Updated 20th January 2016

### RECITALS

- (A) Activate Media is a provider of digital media software development services, e-commerce services over the Internet, and ancillary support and hosting services. Activate Media is a Trading name of Instant Access International Limited. Company Registration number: 2757259 VAT number: 541 4267 60. Registered Office: 42 the Grove, London W5 5LH.
- (B) The Customer wishes to appoint Activate as its supplier of the Services

### 1 DEFINITIONS

"The Commencement Date" shall be the date that the service or project begins;

"Confidential Information" means any confidential information about the other party, trade secrets, know how, confidential knowledge, know-how or information, price lists, financial, trading or other confidential information relating to the other party;

"The Contacts" means the representatives of each party

"The Customer Website" means the website (s) run for the Customer by Activate

"The Customer Trade Marks" means the trademarks or service marks of the Customer supplied to Activate to enable it to provide the Services;

"Insolvent" bears the meaning given to that term in s123 Insolvency Act 1986;

"The Fees" means the fees to be charged by Activate and to be paid by the Customer;

"The Services" means the services provided to the Customer by Activate Media

"The Project" means the project done for the Customer by Activate Media

"The Term" means the period commencing on the Commencement Date and ending on the date that this Agreement is terminated in accordance with Clause 10.

### 2. GENERAL CLAUSES

- 2.1. Activate shall provide the Services for the Fees.
- 2.2. Changes affecting the Services or Services Levels will be subject to negotiation during the Term subject to receipt by Activate of a detailed requirements briefing from The Customer. In the event that Services are changed, the Fees will be reviewed.
- 2.3. The Contacts shall have such authority to answer, resolve and agree any queries or problems arising from Activate in respect of the Agreement.
- 2.4. The Customer shall provide to Activate such co-operation and assistance as Activate shall reasonably require to enable Activate to provide the Services.
- 2.5. Activate will allow The Customer's access to the operation of the Services, upon The Customer giving Activate a minimum of one week written notice.
- 2.6. Activate reserves the right to refuse access to the Customer at the requested time, should it reasonably believe that such access would jeopardise the confidentiality of other work being carried out by Activate for other clients. In such cases the reason will be explained to The Customer immediately and a new date for access agreed within three days.

- 2.7. Activate is authorised by The Customer to use the Customer's Trade Marks solely in connection with the Services. Activate's use of the Customer's Trade Marks will be in accordance with The Customer's policies in effect from time to time.
- 2.8. Activate is authorised by The Customer to use any other property of the Customer solely in connection with the Services. Activate's use of such property will be in accordance with The Customer's policies in effect from time to time.
- 2.9. It is the Customers sole responsibility to ensure that (i) any material or information supplied for Activate to use in the Services or Project and/or (ii) any designs produced by Activate, on your behalf, do not infringe any third party rights, in particular intellectual property rights, and will not result in us incurring any liability to a third party. The Customer agrees to fully indemnify Activate for any loss, cost or damage we suffer if this is not the case.

### **3. SCOPE**

- 3.1. The services which Activate is obliged to supply under this Agreement are limited to the Services or Project.
- 3.2. This Agreement constitutes the entire agreement between the parties for the Services or Project unless supplemented with a bespoke contract and agreed by both parties.

### **4. FEES**

- 4.1. Fees are exclusive of VAT, which will be added to all invoices to UK customers and non VAT registered EC customers.
- 4.2. The Fees excludes any other form of taxation, which may be imposed in the future, which shall be paid for by The Customer on the due date for payment of the price.
- 4.3. Fees for any Service or Project will be set out with a quote and/or specification. Unless otherwise agreed fifty percent of the Fees are due to Activate on the before work commences and the remainder is due on completion of the Work. Additional Services not set out in the original quote or specification shall be charged for at Activate's standard hourly rates.
- 4.4. If Activate completes part of the specification and then the Project has to be aborted. The Fees in this case is for all the work completed to date at current hourly rates but such charges will of course not exceed any fixed Fees that we may have agreed for the project as a whole.
- 4.5. In addition to the Fees, reasonable additional costs such as courier costs caused by The Customer, his client, or agent may be charged to The Customer by Activate.

### **5. PRICE VARIATION**

- 5.1. Activate may increase the Fees to reflect any increase in the cost to Activate which results from causes beyond its reasonable control.
- 5.2. Any variation of the Fees for any other reason will be subject to the prior notification to The Customer by Activate and The Customer's written agreement to such variation, such Agreement not to be unreasonably withheld.

### **6. CORRECTIONS TO INVOICES**

- 6.1. Activate reserves the right to correct its invoices where clerical, typographical or other errors have been made.

### **7. WARRANTY AND FAULT RESOLUTION**

- 7.1. In the event that a defect, fault or impairment in the provision of the Services causes a Service interruption and the Customer gives notification to Activate of such default, fault or impairment, then Activate shall use its best endeavours to resolve that defect, fault or impairment as quickly as is reasonably possible.
- 7.2. If Activate determines in its reasonable opinion that such a defect, fault or impairment results directly or indirectly from: (i) the negligence, act, omission, or default of the Customer, (ii) the Customer's breach of this Agreement, or (iii) the operation, failure or malfunction of any network, equipment or software owned or controlled by the Customer (including, without limitation, Customer Equipment) other than Service Equipment, or (iv) any third party action in response to an act or omission of the Customer or any person given access to the Services by the Customer (together 'Exempted Failures'), then Activate may recover in advance from the Customer all reasonable costs to be incurred by it or on its' behalf in connection with the remedy of such defect, fault or impairment.

## **8. EQUIPMENT**

- 8.1. The Customer acknowledges that Activate and its subcontractors may substitute, change, rearrange, or reconfigure the service equipment at any time, provided that any such change does not alter the technical functionality of the Services except where such alteration is specified in a Service Order or is otherwise requested in writing and agreed by Activate.
- 8.2. Where practicable, Activate shall give the Customer 30 days (thirty days) prior notification of any substitution, change, rearrangement or reconfiguration of the service equipment made pursuant to Clause 8.1
- 8.3. In the instance that the customer supplies equipment, specifically but not exclusively web servers and software which operates on those servers, Activate will use reasonable efforts to maintain operation while being hosted in under this agreement.

## **9. SERVICE SUSPENSION**

- 9.1. Activate shall be entitled in its sole discretion to elect to suspend forthwith provision of the Service(s) until further notice in the event that (i) Activate is entitled to terminate this Agreement, without prejudice to Activate's right subsequently to terminate the entire Agreement; or (ii) Activate requires to carry out Scheduled Maintenance to the Service Equipment or any other equipment or configurations of equipment which are used to provide the Service(s); or (iii) Activate is obliged to comply with an order, instruction or request of Government, an emergency service organisation or other competent administrative authority; or (iv) if any amounts due to Activate are not paid in accordance with Section 15; or (v) in the event that Activate requires to carry out unscheduled maintenance.
- 9.2. in the event that Activate exercises its right to suspend the Service(s) pursuant to Clauses 9.1(ii), (iii) or (v), it shall where reasonably practicable give prior notice to the Customer of such suspension. For the avoidance of doubt a suspension of the Service(s) shall not be construed as or deemed to be a Service interruption unless it is as a consequence of unscheduled maintenance.
- 9.3. Where the suspension is implemented other than as a consequence of an Exempted Failure or other breach, fault or omission of the Customer, Activate shall make no charge to the Customer in respect of the suspension and/or recommencement of the provision of the Service(s).

## **10. TERMINATION OF THE AGREEMENT**

- 10.1. If either party commits a breach of this Agreement which is capable of remedy, the other party may give a written warning notice of the failure requiring it to be remedied within 7 days. If such failure is not remedied within the specified time the other party may give a further written notice terminating this Agreement immediately.
- 10.2. If either party commits a breach of this Agreement which is incapable of remedy the other party may terminate this Agreement at once.

- 10.3. If either party becomes Insolvent or has an administrator, administrative receiver, manager or receiver appointed over any of its assets or winding-up proceedings are commenced the other party may terminate this Agreement at once.
- 10.4. On termination of this Agreement for whatever reason both parties shall return to the other all property belonging to the other party.
- 10.5. Termination of the Agreement shall not affect the accrued rights and liabilities of other parties.

## **11. VARIATIONS**

- 11.1. Neither Activate nor The Customer shall be bound by any variations waiver of or addition to these conditions except as agreed by both parties in writing and signed by a duly authorised representatives on their behalf.
- 11.2. No employee or agent of Activate has authority to represent or give warranty as to the efficacy, safety, suitability, merchantability, fitness for purpose or otherwise of the Services, or materials supplied or used.

## **12. DELIVERY**

- 12.1. Activate shall not be liable for (i) any consequential or economic loss (whether arising by virtue of this Agreement, tort or for (ii) for any delay caused by war, strikes, lock outs, fire, flood, explosion, government restriction, telecommunications failures, electricity failures, failure to obtain or shortages of materials, or by any other cause beyond its reasonable control.
- 12.2. Activate provides warranties and accepts liability only to the extent stated in this Clause 12.2. All warranties which might otherwise be implied are expressly excluded.
- a. Activate accepts liability for death or personal injury resulting from its negligence. For all other claims, except where prohibited by statute Activate's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement or otherwise shall be limited to £50,000 or the Fees paid under this Agreement whichever is the lesser.
  - b. Activate does not warrant, guarantee or make any representation express or implied without limitation as to the accuracy, reliability, completeness, currentness, functionality, validity, availability, merchantability or fitness for any particular purpose of the Services.
- 12.3. The Customer shall be liable for and shall indemnify Activate and hold it harmless against any expenses liability loss damage claim demand or proceeding whatsoever arising in respect of the performance of the Services except as a result of any breach of this Agreement on the part of Activate its officers or employees.
- 12.4. The Customer shall be liable for and shall indemnify Activate and hold it harmless against any expenses liability loss damage claim demand or proceeding whatsoever arising in respect of failures of any Customer supplied hardware or software.

## **13. DELIVERY OVER TIME**

- 13.1. If delivery of Services is to be made over a period of time, each delivery of part of the Services shall be deemed to form a separate enforceable work package and Activate shall be entitled to issue and be paid on a separate invoice for each such delivery. Failure to make any one or more deliveries shall not affect the enforceability of his Agreement as to remaining deliveries.

## 14. SUBCONTRACT

- 14.1. Activate is entitled to subcontract with third parties to fulfil the requirements of this Agreement. Activate will take responsibility for the work, content, delivery and payment for all services provided by its subcontractors.

## 15. PAYMENT

- 15.1. All invoices, except for the installation fee, issued by Activate to the Customer must be paid within thirty days after the date of invoice, following which interest will be charged on any overdue payment at the rate of 3 per cent per annum above Barclays Bank Plc base rate in force calculated from the date when payment becomes due until the date payment is made (reset and compounded on the first of each month). The Customer hereby authorises Activate to deduct any sums properly owing to Activate from any monies of The Customer or owed to The Customer held by Activate.
- 15.2. Where part of an invoice is reasonably disputed the remainder of the invoice together with the VAT applicable should be paid on the due date. The Customer shall pay the balance or any alternative amount agreed by Activate on resolution of the dispute to the reasonable satisfaction of Activate.
- 15.3. Activate reserves the right to reclaim any costs incurred in the recovery of any overdue amounts.
- 15.4. If the Customer fails to make any payment on the due date then without prejudice to any of Activate's other rights, Activate may suspend or cancel deliveries of any Services due to The Customer and appropriate any payment made by The Customer for Services supplied under this or any other agreement with The Customer as Activate may in its sole discretion think fit. Activate further reserves the right to hold the Customers hardware, software, data, domain names, and other intellectual property that in Activates possessions until full payment and cost of collection is received.
- 15.5. If payment is not received after 30 days after it is due, Activate reserves the right to sell or dispose the Customers hardware, software, and data to settle any outstanding invoices owing to Activate Media.

## 16. CONFIDENTIALITY

- 16.1. Each party agrees to use all reasonable endeavours to prevent disclosure of any Confidential Information which it may obtain in the course of its activities under this Agreement and shall take all reasonable steps to protect such Confidential Information. This obligation shall not apply to:
- 16.2. Information which is in the public domain other than as the result of a breach of this Agreement.
- 16.3. Information the disclosure of which is essential to the provision of the Services PROVIDED THAT such information is used solely for that purpose.
- 16.4. Any disclosure required by law or the regulations of any regulatory body to which a party is subject
- 16.5. Subject to the prior written consent of the Customer (which shall not be unreasonably withheld or delayed), for the Term and for 180 days thereafter, Activate is permitted to use any e-mail addresses collected by Activate in the course of providing the Services.

## 17. DATA AND DATA PROTECTION LEGISLATION

- 17.1. Each party shall comply with all legal requirements relating to the storage and use of data.
- 17.2. Any data collected by Activate on behalf the Customer will remain the property of the Customer at all times and is confidential. Activate will provide the data to the Customer on a timely basis. Activate will only use such data for the purposes permitted in this Agreement
- 17.3. The Customer must adhere to Activate's **Acceptable Use Policies** (which follow in Appendix 1) and accepted 'privacy' statement policies and practices that are in common use in the United Kingdom.

17.4. The Customer may not sell, sub license, or rent the data collected by Activate on its behalf to any third party.

17.5. Any data provided by The Customer which is held by Activate will remain the property of The Customer at all times.

17.6. The Customer must notify Activate if any of The Customer's data held by Activate is confidential.

17.7. The Customer's data held by Activate will be subject to Activate's procedures as set forth in its Review of Assets, Risks and Disaster Plan or such equivalent document time to time in force.

## **18. INTELLECTUAL PROPERTY**

18.1. All copyright intellectual property and other rights produced, developed, invented or provided by Activate in the course of delivering Services shall remain the property of Activate. However on payment of our Fees, you shall have a non-exclusive licence to use the IPR contained in the Services for the purpose implicit in the creation of the Project

18.2. All copyright intellectual property and other rights produced, developed, invented or provided by the Customer in the course of receiving Services shall remain the property of the Customer.

## **19. ASSIGNMENT**

19.1. Activate may assign its rights and/or obligations under this Agreement without the written consent of the Customer.

19.2. The Customer shall not assign its rights and/or obligations under this Agreement without the written consent of Activate.

## **20. VALIDITY**

20.1. If any part of this Agreement is held to be unenforceable at any time it will not affect the rest of the Agreement.

## **21. NOTICES**

21.1. Any notice may be served on the other party by post or fax to the address shown in the Agreement or otherwise notified.

## **22. JURISDICTION**

22.1. This Agreement shall in all respects be governed by and construed in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts in any legal proceedings and as regards any claim or matter relating to this Agreement.

## **23. DOMAIN NAMES**

23.1. For most domains, including .com, .co.uk and .uk, Activate charges £25.00 per year for managing your domain, including: registration, renewal, DNS management.

23.2. We email renewal notices at least 30 days before your domain expires. If we do not hear from you we email you one more notice before your domain expires. If we do not hear from you by your renewal date your domain will expire.

23.3. We reserve the right to make a £10.00 charge to transfer your domain to a new registrar.

23.4. All UK domains: .co.uk, .uk are also subject to Nominet's terms and conditions which can be found at <http://www.nominet.org.uk/go/terms>

## 24. CUSTOMER SERVICE LEVEL AGREEMENT, ISSUES

24.1. We will respond to all points of contact within 1 business day and aim to resolve any issues you have within 5 business days. Please us at [info@activate.co.uk](mailto:info@activate.co.uk)

## 25. ABUSE AND COMPLAINTS

25.1. If you wish to raise a complaint about abuse you have received (phishing scams, spam emails etc), please contact us at [info@activate.co.uk](mailto:info@activate.co.uk) with as much detail about the abuse. We will investigate your complaint within 1 business day,

25.2. If you wish to make a complaint about a service you have received, please submit an email to us at [info@activate.co.uk](mailto:info@activate.co.uk) including as much detail from the issue you have. We will acknowledge your complaint within 1 business day and aim to resolve any issues within 5 business days. If you're not happy with the initial outcome of your complaint, you can escalate your complaint to a manager/director by emailing [sales@activate.co.uk](mailto:sales@activate.co.uk).

25.3. In regards to UK domains, you are also able to make a formal complaint about a registrar to Nominet (the .uk registry) at: <http://www.nominet.org.uk/disputes/complaining-about-registrar/complaints-procedure>

## **Appendix 1**

### **Acceptable Use Policies**

The Customer shall not use the Service(s) (and shall ensure that the Service(s) are not used):

- (a) to send, receive, make available, copy retransmit broadcast or publish (whether directly or indirectly, and whether in cached, mirrored or proxy form or otherwise) any statements or material which: (i) infringe any copyright, moral right, patent or other proprietary (including, without limitation, intellectual property) right of any person or entity, or (ii) which infringe any applicable law, regulation or right of any person or entity including, without limitation, rights under contracts and of confidence, laws relating to defamation, contempt, blasphemy, infringement of privacy or personal data rights, malicious falsehood, seditious libel and any equivalent or related laws in any territory in which they are (or may be) accessed or made available.
- (b) to send, receive, make available, copy retransmit, broadcast or publish (whether directly or indirectly, whether in cached, mirrored or proxy form or otherwise) any statements or material which are (or may, in places where they are accessible or made available) offensive, abusive, indecent, obscene, or menacing; or which are likely to encourage or capable of encouraging anything which is in any way unlawful, or to incite violence, sadism, cruelty, or racial hatred, or which promotes or facilitates prostitution, or which are likely to mislead by inaccuracy, ambiguity, exaggeration, omission or otherwise;
- (c) to cause annoyance, inconvenience, or needles anxiety;
- (d) other than in conformance with policies of any connected networks and the Internet Standards;
- (e) use a Name such as to infringe the rights of any person whether in statute or common law, in a corresponding trademark or name;
- (f) in a manner which occupies communications capacity or bandwidth frivolously, vexatiously or in a manner which is intended to or may inhibit any other person's use thereof (including, without limitation, by use of facilities intended to substantially fill the communications capacity of leased lines, such as SPAM, UCE, TCP Sprayers and Flood Ping);
- (g) in a manner which permits IP data packets to be sent with source addresses outside the IP address range granted to the Customer.
- (h) to send Unsolicited Bulk Email. The Sender (whether User or Customer) must have explicit permission from all destination addresses before Sender sends an email in any quantity. Sender may not assume that sender has been granted permission by passive actions such as the posting of an article to Usenet or a visit made to senders web site. Where Sender has acquired explicit permission, either on a web site or through some other relationship Sender should keep a record of this permission and much cease sending email when requested to stop;
- (i) to relay Unsolicited Bulk Email. Operators of email systems must ensure that they do not further the sending of Unsolicited Bulk Email by others. This applies to both material that originates on Customers system and also third party material that might pass through it. This includes but is not limited to a prohibition on running an 'open mail relay', viz a machine which accepts mail from unauthorised or unknown senders and forwards it onward to a destination outside of Customer's (or Users') machines or network. If Customer's or Users' machine does relay mail, on an authorised basis, then it must record its passing through your system by means of an appropriate 'Received' line. However, nothing in this clause shall prevent Customer or User running an 'anonymous' relay service provided that the operator monitors it in such a way as to detect unauthorised or excessive use.