

WEB DESIGN TERMS AND CONDITIONS

Please read these Web design and development Terms carefully, as they set out our and your legal rights and obligations in relation to our web design and development services.

You should print a copy of these Terms for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our Website in future.

These Terms are available in the English language only.

If you have any questions or complaints about these Terms or our Services, please contact us by writing to Atlantis Creative Studios by email to info@atlantis-studios.net

AGREEMENT:

1. Definitions and interpretation

1.1. In this Agreement:

“Acceptance Criteria” has the meaning given to it in Clause [5.2];

“Acceptance Period” means the period of 5 Business Days beginning on the date of actual delivery of the Website to the Customer;

“Affiliate” means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

“Agreement” means this agreement and any amendments to it from time to time;

“Business Day” means any week day, other than Saturday or Sunday or a bank or public holiday in Kenya;

“Business Hours” means between 08:00 and 17:00 (Kenyan time) on a Business Day;

“Fees” means the amounts payable by the Customer to Atlantis under or in relation to this Agreement;

“Confidential Information” means:

any information supplied by one party to the other party (whether supplied in writing, orally or otherwise) marked as “confidential”, described as “confidential” or reasonably understood to be confidential;

the terms (but not the existence) of this Agreement;

“Control” means the legal power to control (directly or indirectly) the management of an entity (and

“Controlled” will be construed accordingly);

“*Customer Works*” means the works and materials provided to Atlantis by the Customer, or by any third party acting for or on behalf of the Customer, for incorporation into the Website;

“*Defect*” means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of the Website but excluding any defect, error or bug caused by or arising as a result of:

an act or omission of the Customer, or an act or omission of one of the Customer’s employees, officers, agents or sub-contractors;

an incompatibility between the Website and any other application, program or software (other than the Customer Works and the Third Party Works).

“*Delivery Date*” means the date for delivery of the Website;

“*Design Elements*” means the visual appearance of the Website (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Website) together with all mark-ups and style sheets comprised in or generated by the Website, but excluding:

the Customer Works; and

the Third Party Works;

“*Effective Date*” means the date of execution of this Agreement;

“*Force Majeure Event*” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“*Intellectual Property Rights*” means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“*Services*” has the meaning given to it in Clause [3.1];

“*Software Elements*” means the Website excluding:

the Design Elements;

the Customer Works; and

the Third Party Works;

“*Third Party Works*” means the works and materials comprised in the Website, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Works);

“*Term*” means the term of this Agreement;

“*Unlawful Content*” has the meaning given to it in Clause [7.1];

“*Website*” means the website or web application to be developed by Atlantis for the Customer under this Agreement; and

“Year” means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

In this Agreement, a reference to a statute or statutory provision includes a reference to:

that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this Agreement.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement; it follows that a general concept or category utilized in this Agreement will not be limited by any specific examples or instances utilized in relation to such a concept or category.

2. Term

This Agreement will come into force on the Effective Date and will continue in force until the acceptance of the Website by the Customer in accordance with Clause [5], upon which it will terminate automatically, unless terminated earlier in accordance with Clause [14].

3. The Services

3.1 Atlantis will:

- a) design and deliver the Website;
- b) host the Website on a third party server if applicable
- c) incorporate the Customer Works and Third Party Works into the Website;
- d) keep the Customer informed of the progress of the Website's development; and provide the Customer with reasonable access to the Website during the Term; provide the Customer, after the Term with reasonable access to the Website content by means of a content management system.
try to provide the Customer with the business e-mail address of choice based on the domain name used by the Website.
(the “Services”).

3.2 Atlantis will use all reasonable endeavors to perform the Services in accordance with the timetable set out in accordance with the Customer; however, Atlantis does not guarantee that that timetable will be met.

4. Customer obligations

4.1 The Customer will provide Atlantis with:

- a) such co-operation as is required by Atlantis (acting reasonably) to enable the performance by Atlantis of its obligations under this Agreement; and
- b) all information and documents required by Atlantis (acting reasonably) in connection with the provision of the Services.

4.2 The Customer will be responsible for procuring any third party co-operation reasonably required by Atlantis to enable Atlantis to fulfill its obligations under this Agreement.

5. Delivery and acceptance

5.1 Atlantis will use all reasonable endeavors to deliver the Website to the Customer for acceptance testing on or before the Delivery Date.

5.2 During the Acceptance Period, the Customer will carry out acceptance tests to determine:

- a) whether the Website conforms in all material respects with the agreed specification of the Website; and
- b) whether the Website has any Defects;

(the "Acceptance Criteria").

5.3 If the Website meets the Acceptance Criteria, the Customer will send to Atlantis a written notice during the Acceptance Period confirming acceptance of the Website.

5.4 If the Website does not meet the Acceptance Criteria:

- a) the Customer will send to Atlantis a written notice during the Acceptance Period setting out in detail the respect(s) in which the Website does not meet the Acceptance Criteria; and
- b) Atlantis will have a further remedial period to modify the Website so that it meets the Acceptance Criteria.

5.5 The Website will be deemed to have been accepted by the Customer if:

- a) the Customer does not give any notice to Atlantis under either Clause [5.3] or Clause [5.4] during the Acceptance Period; or
- b) the Customer publishes the Website or uses the Website for any purpose other than development and/or testing.

6. Third Party Works

Any license fees for Third Party Works are included in the Fees (unless the parties agree otherwise).

7. Unlawful Content

7.1 The Customer will ensure that the Customer Works do not infringe any applicable laws, regulations or third party rights ("Unlawful Content").

7.2 The Customer will indemnify and will keep indemnified Atlantis against all damages, losses and expenses (including legal expenses) arising as a result of any claim that the Customer Works constitute Unlawful Content, or any legal proceedings relating to such a claim.

8. Fees and payment

8.1 Atlantis will issue invoices for the Fees to the Customer on the relevant invoicing dates, or (if earlier) upon the acceptance of the Website by the Customer.

8.2 The Customer will pay the Fees to Atlantis within 21 days of the date of issue of an invoice issued in accordance with Clause 8.1.

8.3 VAT is applicable on all Fees stated in or in relation to this Agreement.

8.4 Fees must be paid by Pay bill or by bank transfer, using such payment details as are notified by Atlantis to the Customer from time to time).

8.5 If the Customer does not pay any amount properly due to Atlantis under or in connection with this Agreement, Atlantis may:

- a) charge the Customer interest on the overdue amount at the rate of 4% per year above the base rate.
- b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts
- c) take down the website till full payment and interests have been settled. Atlantis will not be liable for any loss, damages or inconveniences caused for such takedown.

9. Intellectual Property Rights

9.1 From the date of acceptance of the Website by the Customer, Atlantis hereby assigns to the Customer all its Intellectual Property Rights in the Design Elements. These rights are assigned for the whole term of such rights together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.

9.2 All Intellectual Property Rights in the Software Elements will, as between the parties, be the property of Atlantis and, from the date of acceptance of the Website by the Customer, Atlantis grants to the Customer a non-exclusive worldwide license to use the Software Elements in connection with the Website, subject always to the other terms of the Agreement and the Customer may only sub-license the rights licensed under this Clause for the limited purposes, and subject to the express restrictions, specified in this Clause.

9.3 The Third Party Works will be either (at the option of Atlantis):

- a) supplied in accordance with the relevant licensor's standard terms for online use;

9.4 Notwithstanding any other provision of the Agreement, the assignments and licenses granted by Atlantis under this Agreement are subject to the payment by the Customer of all amounts owing to Atlantis under this Agreement in full and on time.

In the event that the Customer owes any amount to Atlantis under this Agreement and fails to pay that amount to Atlantis within 14 days of receiving a notice:

- a) requiring it to do so; and
- b) specifying that the assignments will revert and the licenses will terminate if the amount repays unpaid, then Atlantis may immediately revert the assignments and terminate the licenses granted by Atlantis under this Agreement by giving written notice of reversion and termination to the Customer

9.5 Without prejudice to Clause [9.7], Atlantis waives (and will use reasonable endeavors to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Website arising, so far as is legally possible, any broadly equivalent rights anywhere in the world.

9.6 Atlantis may include the statement "Designed by Atlantis" together with a link to Atlantis's website on each page of the Website in a position and in a form to be agreed by the parties.

9.7 Should the Website be provided with a content management system, Atlantis may also include a statement together with a link to the CMS provider's website on each page of the Website in a position and in a form to be agreed by the parties

9.8 The Customer will retain any such credit and link in any adapted version of the Website, and the Customer will only remove any such credit and link from the Website at Atlantis's request.

10. Warranties

10.1 The Customer warrants to Atlantis that it has the legal right and authority to enter into and perform its obligations under this Agreement.

10.2 Atlantis warrants to the Customer:

- a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
- b) that it will perform its obligations under this Agreement with reasonable care and skill;
- c) that the use of the Website (excluding the Customer Works) by the Customer in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights of any third party; and
- d) that the Website will continue to operate without any Defects for a period of 12 months from the date of acceptance of the Website (and if the Website does not so operate, Atlantis will, for no additional charge, carry out any work necessary in order to ensure that the Website operates without any Defects during this period).

10.3 The Customer acknowledges that Atlantis has designed the Website to work with web browser technology.

10.4 The Customer further acknowledges that Atlantis does not purport to provide any legal advice under this Agreement or in relation to the Website and Atlantis does not warrant that the Website will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

10.5 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

11. Liability

11.1 Nothing in this Agreement will exclude or limit the liability of either party for:

- a) death or personal injury caused by that party's negligence;
- b) fraud or fraudulent misrepresentation on the part of that party; or
- c) any other liability which may not be excluded or limited under applicable law.

11.2 Subject to Clause [11.1], each party's liability to the other party under or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence), will be limited as follows:

- a) neither party will be liable for any:
 - (i) loss of profits, income or anticipated savings,
 - (ii) loss or corruption of any data, database or software,
 - (iii) reputational damage or damage to goodwill;
 - (iv) loss of any commercial opportunity, or
 - (v) indirect, special or consequential loss or damage;
- b) neither party will be liable for any losses arising out of a Force Majeure Event; and
- c) each party's liability in relation to any event or series of related events will in no circumstances exceed Ksh 10,000.

12. Data protection

12.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to Atlantis under this Agreement.

12.2 Atlantis warrants that:

- a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by Atlantis on behalf of the Customer; and
- b) it has in place appropriate security measures (both technical and organizational) against unlawful or unauthorized processing of Personal Data and against loss or corruption of Personal Data processed by Atlantis on behalf of the Customer.

13. Confidentiality and publicity

13.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [13]. (For the purposes of this Clause [13], the terms of this Agreement constitute the Confidential Information of each party.)

13.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

13.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

13.4 These obligations of confidentiality will not apply to Confidential Information that:

- a) has been published or is known to the public (other than as a result of a breach of this Agreement);
- b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
- c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body or a stock exchange.

13.5 Neither party will make any public disclosure relating to the subject matter of this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

14. Termination

14.1 Either party may terminate this Agreement at any time by giving at least 30 days' written notice to the other party.

14.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

- a) commits any material breach of any term of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

14.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:

- a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganization where the resulting entity will assume all the obligations of the other party under this Agreement); or
- d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

15. Effects of termination

15.1 Upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7, 8.5, 9, 10, 11, 13, 15, and 17.3 to 17.13.

15.2 Termination of this Agreement will not affect either party's accrued rights (including Atlantis's accrued rights invoice for and to be paid the Fees) as at the date of termination.

15.3 If this Agreement is terminated by the Customer under Clause 14.2 or 14.3 (but not in any other case):

Atlantis will provide to the Customer an electronic copy of the Website within 30 days;

Atlantis will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, subject to payment of Atlantis's reasonable expenses; and

the Customer will be entitled to a refund of any Fees paid by the Customer to Atlantis in respect of any Services which were to be performed after the date of effective termination, and will be released from any

obligation to pay such Fees to Atlantis (such amount to be calculated by Atlantis using statement of work document).

15.4 Save as provided in Clause 15.3(c), the Customer will not be entitled to any refund of Fees on termination, and will not be released from any obligation to pay Fees to Atlantis.

16. Changes to project

The Customer understands and accepts that all additions, alterations, changes in content, layout or process changes requested, will alter the time and cost. The Client shall offer Atlantis the first opportunity to make any changes. All requests for changes shall be in writing. Changes fees are as follows:

16.1 Each page is subject to up to 2 (two) free design revisions. Additional revisions will be charged at a rate of 500/= per revision per page.

16.2 Any additional pages added to the list above will add 1 week to the project timeline. Content can be produced for any of the above pages, or any additional pages, at a rate of Ksh. 1,000 per page.

17. General

17.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally, sent by registered post, or email, for the attention of the relevant person, and to the relevant address or email address.

17.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):

- a) where the notice is delivered personally, at the time of delivery;
- b) where the notice sent by registered post, 48 hours after posting; and
- c) where the notice sent email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

17.3 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

17.4 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

17.5 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

17.6 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

17.7 Each party may freely assign its rights and obligations under this Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this

Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any rights or obligations under this Agreement.

17.8 Atlantis may subcontract any of its obligations under this Agreement to any third party.

17.9 Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the other party who has been involved in the performance of this Agreement.

17.10 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

17.11 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

17.12 This Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this Agreement. Subject to Clause [11.1], each party acknowledges that no representations or promises not expressly contained in this Agreement have been made by or on behalf of the other party.

17.13 This Agreement will be governed by and construed in accordance with the laws of Kenya; and the courts of Kenya will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.