



## Terms & Conditions

Bluestone98 | 2016 - 2017

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions, unless the context otherwise requires, the following expressions shall have the following meanings:

"Acceptance Tests Specification" means a document detailing the Acceptance Tests, to be prepared pursuant to condition 4 of Part B of these terms and conditions;

"Acceptance Tests" means those tests which are contemplated by the Acceptance Tests Specification;

"Acceptance" means acceptance by the Client of the Solution pursuant to condition 4.4 of Part B of these terms and conditions;

"Availability" means the amount of time in any calendar month that the Solution is available for normal operation, to be expressed as a percentage;

"Availability Target" means Availability of 99.5%;

"Business Day" means any day which is Monday to Friday, bank holidays and weekends excluded;

"Charges" means the charges detailed in the Estimate;

"Client" means the party detailed in the Engagement Letter;

"Contract Hourly Rate" means £80 per hour, which from time to time, shall reserve the right to increase on thirty (30) days notice;

"Contract" means a contract entered into pursuant to these terms and conditions, as evidenced by:

(i) the existence of a signed Estimate

(ii) a purchase order or sales order which may or may not reference the Estimate, signed or unsigned; or

(iii) the parties general course of dealing;

"Creative Services" means the creative services detailed in the Estimate and Part 13 of these terms and conditions;

"Design Brief" means the documents detailing the design requirements for the Artwork;

"Development Services" means the software or website development services detailed in the estimate and Part B of these terms and conditions;

"Digital Artwork" means the digital artwork created by Bluestone pursuant to the Creative Services;

"Engagement Letter" means the letter to which these terms and conditions are attached;

"Equipment" means the equipment detailed in the Estimate;

"Expenses" means all travel, accommodation and sustenance expenses incurred in the performance of the Contract;

"Final Proof" means the final proof of the Digital Artwork;

"Force Majeure Event" means any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of electronic systems, damage to or failure of any third party's computer equipment, software, connectivity, network or telecommunications systems, or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations;

"Bluestone Materials" means all materials belonging to Bluestone at the time the Contract is entered into;

"Bluestone" or "Bluestone98" means Bluestone Design Group Limited (Company Number 03995844) whose

registered offices are at No5 Victoria Avenue, Harrogate HG1 1EQ, depending upon which party is specified in the Estimate; "Intellectual Property Rights" means copyright, database right, patents, registered and unregistered design rights, registered and unregistered trademarks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same;

"Normal Working Hours" means 9:00am till 5:30pm on any Business Day;

"Other Services" means the consultancy services detailed in the Estimate and part C of these terms and conditions;

"Payment Terms" means the terms for payment of the Charges under the Contract, as detailed in the Estimate.

"Estimate" means the document evidencing the Contract, in particular, details of what is being supplied, the Charges and Payment Terms.

"Solution Description" means the documents detailing the Solution, which may comprise a

"Functional Specification" and/or "Information Architecture" document;

"Solution" means the solution detailed in the Estimate or Solution Description;

"Term" means the period of time detailed in the Estimate;

"Third Party Materials" means all materials belonging to parties other than Bluestone or the Client;

1.2 In these terms and conditions:

1.2.1 any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;

1.2.2 references to any gender includes any other gender and the singular includes the plural and vice versa;

1.2.3 the headings are for ease of reference only and shall not affect the construction or interpretation;

2. SCOPE

2.1 The parties shall from time to time enter into Contracts each of which shall constitute separate contractual agreements.

2.2 Each Contract shall be governed by the terms and conditions set out in the Contract.

2.3 The terms and conditions set out in this Part A shall apply to every Contract.

2.4 If the Contract encompasses the supply of:

2.4.1 Equipment, the additional terms and conditions set out in Part 7 of these terms and conditions shall also apply;

2.4.2 Creative Services, the additional terms and conditions set out in Part 13 of these terms and conditions shall also apply;

2.4.3 Other Services, the additional terms and conditions set out in Part C.

2.5 If there is any conflict between the provisions of this Part A and those of Parts B through C, the provisions of this Part A shall prevail.

3. PERFORMANCE

3.1 Unless otherwise specified in these terms and conditions:

3.1.1 time for performance of the Contract shall not be of the essence, which shall not be made so by the service of any notice.

3.1.2 the Contract shall be performed during Normal Working Hours.

#### 4. CLIENT CO-OPERATION

- 4.1 Bluestone and the Client shall each appoint a project manager who is conversant with all aspects of the Contract and reasonably able to deal with all matters of a technical nature, arranging and conducting progress meetings.
- 4.2 The Client shall co-operate with Bluestone in:
  - 4.2.1 its performance of the Contract; and
  - 4.2.2 the provision of all information and documentation including any materials belonging to the Client, reasonably requested by Bluestone to enable Bluestone to perform the Contract.

#### 5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 Unless otherwise provided for in Parts A through 6 of the Contract, all Intellectual Property Rights created or arising under the Contract shall vest absolutely in Bluestone.

#### 6. CHARGES

- 6.1 Unless the Charges are specified in the Estimate as being fixed, they shall be treated as an estimate only. The actual Charges shall be calculated on a time and materials basis with reference to the Contract Hourly Rate and any other hourly or daily rates which are referenced in the Estimate.
  - 6.2 The Charges shall be no less than the Charges which are specified in the Estimate. Invoices shall be raised and Charges paid in accordance with the Payment Terms.
  - 6.3 In the absence of any Payment Terms, Bluestone shall issue invoices for payment of the Charges with 50% due on commencement of the project, a further 25% at an agreed stage equal to 75% of the project being complete and the remainder upon the agreed completion date of the Contract. Such invoices shall be payable by the Client within 5 days of the date of invoice.
    - 6.3.1 All deposit payment are none refundable, due to pre-booking studio space and time and to cover meetings, research and support to your projects.
  - 6.4 Time for payment of the Charges shall be of the essence.
  - 6.5 No payment shall be deemed to have been received until Bluestone has received cleared funds.
  - 6.6 All payments payable to Bluestone under the Contract shall become due immediately on its termination despite any other provision.
  - 6.7 The Client shall make all payments due under the Contract, in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Bluestone to the Client.
  - 6.8 If the Client fails to pay Bluestone any sum due pursuant to this condition 6, the Client shall be liable to pay interest to Bluestone on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.
  - 6.9 The Charges are exclusive of any Expenses, value added tax, import or export duties, which the Client shall pay in addition to the Charges.
- #### 7. GENERAL WARRANTIES & LIMITATIONS
- 7.1 Each party warrants to the other that in relation to the Contract:
    - 7.1.1 each has unrestricted rights to or under, all Intellectual Property Rights in any materials or components utilised;
    - 7.1.2 each is entitled to use all know-how and confidential information necessary to enable it to fully and effectively perform any obligations;

- 7.1.3 where appropriate, each has complied with and shall continue to comply with all of its obligations (including but not limited to the payment of royalties) to any proprietors of third party Intellectual Property Rights.
- 7.2 Each party shall indemnify the other for any losses incurred as a result of any judgement brought against the other by reason of any breach of condition 7.1 above.
- 7.3 All warranties provided under the Contract by Bluestone, whether by statute, common law or otherwise, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care, shall not apply:
  - 7.3.1 in respect of any defect arising from the Client's wilful damage, negligence, usage in abnormal working conditions, failure to follow Bluestone's instructions (whether oral or in writing), misuse of, alteration or repair without Bluestone's prior written approval;
  - 7.3.2 if any of the Charges are outstanding.

## 8. LIABILITY

- 8.1 The following provisions set out the entire financial liability of Bluestone (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
  - 8.1.1 any breach of these terms and conditions;
  - 8.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 8.2 Nothing in these terms and conditions excludes or limits the liability of Bluestone:
  - 8.2.1 for death or personal injury caused by Bluestone's negligence;
  - 8.2.2 for any matter which it would be illegal for Bluestone to exclude or attempt to exclude its liability;
  - 8.2.3 for fraud or fraudulent misrepresentation.
- 8.3 Subject to condition 8.1 and condition 8.2, in respect of each Contract:
  - 8.3.1 Bluestone's total liability for any claim in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract ("Claim") shall be limited to the Charges paid to Bluestone in the twelve (12) months preceding the date of the Claim.
  - 8.3.2 Bluestone shall not be liable to the Client for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 9. EARLY TERMINATION

- 9.1 Notwithstanding anything else contained herein, the Contract may be terminated by Bluestone with immediate effect if the Client:
  - 9.1.1 is in material breach of the Contract and the breach is not capable of remedy; or
  - 9.1.2 is in material breach of the Contract and the breach is capable of remedy and that other party shall have failed to remedy that breach within thirty (30) days of notice, specifying the breach and requiring its remedy; or



9.1.3 shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

#### 10. CONSEQUENCES OF TERMINATION

10.1 Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party hereunder or at law, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or to continue in force on or after such termination.

10.2 Condition 10.1 above, and any condition which is stipulated to do so, shall survive termination of the Contract.

#### 11. DISPUTE RESOLUTION

11.1 In the event of any bona fide dispute or difference arising between the parties in connection with the Contract (excluding any dispute relating to non payment of the Charges, for whatever reason), the parties shall attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings.

11.2 If the parties are unable to resolve such dispute or difference within fifteen (15) days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within thirty (30) days of the written request to do so.

11.3 If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties pursuant to condition 11.2 above, or if no meeting of the senior representatives occurs within the prescribed time periods set out in that condition, either party may request the Centre for Dispute Resolution ("CEDR") in writing to appoint an independent expert.

11.4 If either party so requests CEDR to appoint an independent expert, such party must instruct CEDR to ensure that the expert:

11.4.1 acts as an expert and not an arbitrator;

11.4.2 affords the parties the opportunity within reasonable time limits to make representations to him;

11.4.3 informs each party of the representations of the other;

11.4.4 affords each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and

11.4.5 notifies the parties of his decision, with reasons as quickly as practicable.

11.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert, save as where otherwise directed by the expert.

11.6 The expert determination is to be conclusive and binding on the parties except where there is fraud or a manifest error or on a matter of law.

#### 12. FORCE MAJEURE

12.1 If a party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under the Contract by a Force Majeure Event:

- 12.1.1 the Affected Party's obligations under the Contract are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
- 12.1.2 as soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other party (the "Non-Affected Party") in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under the Contract.
- 12.2 If the Affected Party does not comply with condition 12.1.2 it forfeits its rights under condition 12.1.1.
- 12.3 The Affected Party shall:
  - 12.3.1 make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Contract; and
  - 12.3.2 as soon as reasonably possible after the Force Majeure Event, the Affected Party shall notify the other party in writing that the Force Majeure Event has ended and resume performance of its obligations under the Contract.
- 12.4 If the Force Majeure Event continues for more than three (3) months starting on the day the Force Majeure Event starts, Bluestone may terminate the Contract by giving not less than thirty (30) days' notice in writing to the Client.
13. CONFIDENTIALITY AND SECURITY
  - 13.1 Each party shall treat as confidential all information obtained from the other pursuant to the Contract and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent provided that this condition 12 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this condition 13) or which is trivial or obvious. Each party shall ensure that its employees are aware of and comply with the provisions of this condition 13.
  - 13.2 If Bluestone shall appoint any sub-contractor then Bluestone may disclose confidential information to such sub-contractor subject to such sub-contractor giving the Client an under taking in similar terms to the provisions of this condition
13. The foregoing obligations as to confidentiality shall survive any termination of the Contract.
14. ASSIGNMENT AND SUB-CONTRACTING
  - 14.1 The Client shall not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under the Contract without the prior written consent of Bluestone.
  - 14.2 Bluestone shall have the right to sub-contract the performance of the Contract to any third party.
15. RECRUITMENT OF PERSONNEL
  - 15.1 The Client shall not during the continuance of the Contract and for a period of twelve (12) months thereafter, solicit or procure the services of any employee of Bluestone.

## 16. NOTICES

16.1 Any notice given by one party to the other under the Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post will be deemed to have been given two (2) days after the date of posting. Notices shall be delivered or sent to the registered office addresses of Bluestone or the Client or to any other address notified in writing by one party to the other for the purpose of receiving notices after the date of the Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

## 17. FURTHER ASSURANCE

17.1 Either party shall at the request and cost of the other do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to the Contract.

## 18. SEVERANCE

18.1 If any provision of the Contract is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.

18.2 If any provision of the Contract is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

## 19. THIRD PARTIES

19.1 A person who is not party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 20. COSTS

20.1 Each party shall bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of the Contract and all other documents to be completed in accordance with its provisions.

## 21. NO PARTNERSHIP OR AGENCY

21.1 Nothing in the Contract is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other. Save where expressly stated in the Contract, neither party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.

## 22. WAIVER AND CUMULATIVE REMEDIES

22.1 The rights and remedies provided by the Contract may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of the Contract or of a default under the Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of the Contract.

22.2 The rights and remedies provided by the Contract are cumulative and (unless otherwise provided in the Contract) are not exclusive of any rights or remedies provided at law or in equity.



## 23. ENTIRE AGREEMENT

- 23.1 The Contract, together with the documents referred to in it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes any previous agreement between the parties relating to such matters.
- 23.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 23.3 Nothing in this condition 22 shall operate to exclude any liability for fraud.

## 24. GOVERNING LAW AND JURISDICTION

- 24.1 The Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.
- 24.2 Each party irrevocably agrees to submit to the non-exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with the Contract.

## PART B – DEVELOPMENT SERVICES

### 1. SUPPLY

- 1.1 In consideration for payment of the Charges, Bluestone shall supply the Development Services.

### 2. SOLUTION DESCRIPTION

- 2.1 The Client acknowledges that:

- 2.1.1 the Solution Description, accurately reflects what is to be developed by Bluestone; and
- 2.1.2 the Solution shall be based entirely upon the Solution Description and that any changes must be communicated and agreed in accordance with condition 4 below.

### 3. CHANGES

- 3.1 If at any time the Client wishes to alter all or any part of the Solution then the Client shall provide Bluestone with full written breakdown of such alterations and with such further information as Bluestone may reasonably require.
- 3.2 Bluestone shall then submit to the Client as soon as reasonably practicable a full written estimate for such alterations specifying what changes (if any) will be required to the Charges and the Solution Description.
- 3.3 Upon receipt of such estimate the Client may elect either:
- 3.3.1 to accept such estimate in which case the Contract shall be amended in accordance therewith; or
- 3.3.2 to withdraw the proposed alterations in which case the Contract shall continue in force unchanged, subject to condition 3.4.
- 3.4 If the Client's request for such alterations is subsequently withdrawn but results in a delay in the performance of the Development Services, Bluestone shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations equal to the period of the delay.
- 3.5 Bluestone shall not be obliged to consider or make any alterations to the Solution save in accordance with the aforesaid procedure.

#### 4. TESTING AND ACCEPTANCE

- 4.1 If the Solution Description specifies the requirement for substantive Acceptance Tests, Bluestone shall:
  - 4.1.1 write an Acceptance Tests Specification acceptable to the Client, setting out the test data and environment required, the sequence for performing those tests and the acceptance criteria; and
  - 4.1.2 conduct the Acceptance Tests in accordance with the Acceptance Tests Specification, unless otherwise agreed in writing.
- 4.2 If the Solution Description does not specify the requirement for substantive Acceptance Tests, the acceptance criteria for determining the success or failure of the Solution shall be that the Solution is built and functions materially in accordance with the Solution Description, minor errors excluded.
- 4.3 Bluestone shall give the Client at least seven (7) Business Days prior written notice of the start of the Acceptance Tests and the Client shall be entitled to attend and observe them.
- 4.4 Acceptance shall be deemed to have occurred:
  - 4.4.1 when the Solution meets the acceptance criteria in the Acceptance Tests Specification; or
  - 4.4.2 after the elapse of seven (7) Business Days from the commencement of the Acceptance Tests, unless the Client has communicated with Bluestone, specifying any non-compliance of the Solution with the Acceptance Tests;
  - 4.4.3 if the Solution is placed into operational use by the Client.
- 4.5 For the avoidance of doubt, if during the Acceptance Tests the Client notifies Bluestone of any defects or omissions which materially affect the Client's ability to use the Solution in accordance with the Solution Description, Bluestone shall be responsible for rectifying the same at its own cost.
- 4.6 Bluestone shall raise a problem report if the Solution fails any Acceptance Test, identifying the test which failed and the respects in which it failed. However, no Acceptance Test shall be deemed to have failed as a result of any deficiency which:
  - 4.6.1 was discovered by the Client in an earlier test but which had not been notified in writing to Bluestone previously;
  - 4.6.2 was of a trivial nature having no adverse effect on the performance of the Solution.
- 4.7 Bluestone shall at its own cost correct any failure of the Acceptance Tests, and shall then repeat those parts of the Acceptance Tests which previously failed, until they are passed.
- 4.8 For the avoidance of doubt, the cost of carrying out the Acceptance Tests until the Solution has passed such Acceptance Tests shall be borne by Bluestone.
- 4.9 Following successful completion of the Acceptance Tests both Bluestone and the Client shall within three (3) Business Days, sign an acceptance certificate for the Solution, following which, Acceptance shall be deemed to have taken place.

#### 5. WARRANTY

- 5.1 Bluestone warrants that:
  - 5.1.1 in developing the Solution, it shall exercise the utmost professional skill and care;
  - 5.1.2 the Solution shall function materially in accordance with the Solution Description and be free from material defects in design, materials and workmanship for a period of thirty (30) days following Acceptance.
- 5.2 Bluestone shall, free of charge, remedy any breach of the warranty at condition

- 5.1.2 which is notified by the Client in writing during the period of thirty (30) days following Acceptance.
- 5.3 Given the inherent nature of the internet, Bluestone does not warrant that the Solution will be completely error-free, or that it will perform totally without interruption.
6. INTELLECTUAL PROPERTY RIGHTS
- 6.1 Bluestone shall (subject to the provisions of condition 6.2 and 6.3 below) assign to the Client with full title guarantee, all Intellectual Property Rights in the Solution. Such assignment shall only be effective, once all Charges have been paid for in full by the Client.
- 6.2 To the extent that the Solution comprises Bluestone Materials or Third Party Materials no Intellectual Property Rights in such Bluestone Materials or Third Party Materials shall be transferred to the Client.
- 6.3 The Client grants to Bluestone a non-exclusive, perpetual, royalty free right and licence to commercial exploit the Solution for any commercial purpose.
7. EQUIPMENT SUPPLY
- 7.1 In consideration for payment of the Charges, Bluestone shall supply the Equipment.
8. CARRIAGE AND DELIVERY
- 8.1 Delivery shall be to the address specified by the Client. The Client must notify Bluestone of any change in delivery address at least two (2) days before the expected delivery date.
- 8.2 Delivery shall be deemed to have taken place when the Equipment is delivered to the agreed delivery location.
- 8.3 If the Client refuses or fails to take delivery of Equipment or fails to take any action necessary on its part for delivery and/or shipment of the Equipment, Bluestone shall be entitled to terminate that part of the Agreement relating to the Equipment with immediate effect; to dispose of the Equipment as Bluestone may determine and to recover from the Client any loss and additional costs incurred as a result of such refusal or failure including (without limitation) reasonable storage costs from the due date of delivery.
- 8.4 The Client shall notify Bluestone of any shortages or discrepancies with the Order within forty eight (48) hours of the delivery. Bluestone shall not be liable to rectify any shortages or discrepancies which have not been notified.
9. PASSING OF RISK
- 9.1 Risk in the Equipment shall pass to the Client at the time of delivery.
- 9.2 Upon request the Client shall use its reasonable endeavours to have Bluestone's interest in the Equipment noted on the insurance policy. Until title in the Equipment passes to the Client, the Client shall hold the proceeds of any claim on the insurance policy, on trust for Bluestone.
10. TITLE
- 10.1 The Equipment shall remain the property of Bluestone until the Client pays to Bluestone the Charges for the Equipment (together with any accrued interest) and all other amounts owed by the Client in respect of any other agreement.
- 10.2 Until title and ownership of the Equipment has passed to the Client, the Client shall:
- 10.2.1 not re-sell the Equipment;
- 10.2.2 destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;

- 10.2.3 take proper care of the Equipment and take all reasonable steps to prevent any damage to or deterioration of them;
- 10.2.4 keep the Equipment free from any charge lien or other encumbrance and store the Equipment in such a way as to show clearly that they belong to Bluestone;
- 10.2.5 give Bluestone such information relating to the Equipment as Bluestone may from time to time require;
- 10.3 Bluestone reserves the right to repossess and resell any of the Equipment to which it has retained title, with the re-imbusement to the Client of any and all monies paid for them. Bluestone consents to the Client's possession of the Equipment.
- 10.4 The Client grants an irrevocable right and licence to Bluestone and its employees and agents to enter the Client's premises on reasonable notice during normal business hours for the purpose of inspecting and/or repossessing Equipment to which it has retained title.
11. NO WARRANTY
- 11.1 The status of Bluestone is that of a re-seller and not a manufacturer of the Equipment. In this respect and to the fullest extent permissible by law, Bluestone is unable to offer any express warranties of any kind whatsoever in respect of the Equipment.
- 11.2 Save to the extent that any exclusion or restriction of liability may be prohibited by statute, all implied warranties relating to the Equipment (statutory or otherwise) including (without limitation) any warranties relating to quality or fitness for a particular purpose, shall be fully excluded.
- 11.3 The Equipment may be sold with a manufacturer's warranty, details of which shall be dispatched with the Equipment and may be requested from Bluestone in advance of delivery.
- 11.4 Equipment which is found to be "dead on arrival", or defective following delivery, shall be dealt with by the Client in accordance with any subsisting manufacturer's or distributor's warranty. For the avoidance of doubt, this may mean that the Equipment is repaired as opposed to replaced and may not be returned.
- 11.5 In the absence of a manufacturer's or distributor's warranty subsisting at the date of purchase, Bluestone shall supply the Equipment on a strictly without warranty, "as is" basis.
12. LEASED EQUIPMENT
- 12.1 If under the Equipment is leased (which shall be evidenced in the Estimate, then:
  - 12.1.1 notwithstanding conditions 4.1 and 4.2, the title and ownership of the Equipment shall never pass to the Client;
  - 12.1.2 the Client agrees that it shall always take good care of the Equipment and insure the same for the benefit of Bluestone;
  - 12.1.3 the Equipment shall be leased to the Client for the term of the Hosting Services;
  - 12.1.4 upon expiry of the term referred to in condition 6.1.3 above, the Client agrees to return the Equipment to Bluestone, in full working order and without delay.
13. CREATIVE/PR SERVICES SUPPLY
- 13.1 In consideration for payment of the Charges, Bluestone shall supply the Creative Services.
14. FINAL PROOF AND SIGN OFF
- 14.1 If Bluestone is reasonably satisfied that the Digital Artwork materially corresponds with the Design Brief, it shall deliver the Final Proof to the Client. Within a reasonable time period, the Client shall satisfy itself whether or not the Final Proof materially complies with the Design Brief.

- 14.2 If the Client informs Bluestone that it believes the Final Proof does not materially comply with the Design Brief, Bluestone shall take whatever steps are necessary to remedy such non-compliances in a timely manner.
- 14.3 If the Final Proof is deemed by the Client to materially comply with the Design Brief, the Client shall (using the sign off form supplied by Bluestone) "sign off" the Digital Artwork as complete, in which case, Bluestone shall:
  - 14.3.1 deliver the Digital Artwork to the Client;
  - 14.3.2 arrange for the Marketing Materials to be printed in accordance with condition 4 below.
- 14.4 If the Client fails to inform Bluestone of any non-compliance of the Final Proof with the Design Brief, the Final Proof shall be deemed to materially comply with the Design Brief, in which case it shall be "signed off" as complete, and the provisions of conditions 2.4.1 or 2.4.2 shall apply.
- 14.5 If any dispute arises between Bluestone and the Client as to whether or not the Final Proof materially complies with the Design Brief, the parties agree to jointly appoint an independent internet expert for the purposes of making a determination, whose opinion shall be final.
15. INTELLECTUAL PROPERTY RIGHTS
  - 15.1 Unless otherwise provided for in Parts A through H of the Contract, all Intellectual Property Rights created or arising under the Contract shall vest absolutely in Bluestone.
16. PRINTING OF MARKETING MATERIALS
  - 16.1 Bluestone shall produce the Marketing Materials, materially in accordance with the Printing Brief.
  - 16.2 For the avoidance of doubt, Bluestone shall not commence the production of the Marketing Materials in the absence of a "sign off" form, generated pursuant to condition
17. DELIVERY OF MARKETING MATERIALS
  - 17.1 Bluestone reserves the right to make delivery of the Marketing Materials by instalments, unless otherwise expressly agreed in writing.
  - 17.2 Delivery shall be made in boxes or bags of such size as Bluestone may consider to be appropriate for delivery of the Marketing Materials.
  - 17.3 Notwithstanding any express agreement as to the date of delivery of the Marketing Materials Bluestone shall be entitled to postpone or cancel delivery in whole or in part when it is delayed or prevented from making or obtaining any Marketing Materials due to any cause beyond Bluestone's reasonable control.
  - 17.4 For the avoidance of doubt, delivery to the Client, a carrier, or any person, firm or company on behalf of the Client shall for the purposes of this condition 5, constitutes delivery to the Client.
18. OBLIGATIONS OF CLIENT ON RECEIPT OF MARKETING MATERIALS
  - 18.1 Where the Marketing Materials are to be delivered to the Client or its agent, the Client or its agent, shall:
    - 18.1.1 examine the Marketing Materials carefully within five (5) Business Days of taking delivery;
    - 18.1.2 notify Bluestone (or any carrier for Bluestone) in writing within seven (7) Business Days of taking delivery of any error in quantity or description of Marketing Materials delivered or that they were mixed with others, or of any damage to Marketing Materials revealed by such examination and not caused since delivery was taken.



18.2 Failure to make any notification in accordance with condition 12.1.2 which examination under condition 12.1.1 should have reasonably enabled the Client to make; shall constitute a waiver by the Client of all claims based on or relating to facts which such examination should have revealed.

## 19 RISK

19.1 All risk of damage to or loss of the Marketing Materials shall pass to the Client on delivery to the Client.

## 20. TITLE

20.1 The Marketing Materials shall remain the property of Bluestone until the Client pays to Bluestone the Charges for the Marketing Materials (together with any accrued interest) and all other amounts owed by the Client in respect of any other agreement. 8.2 Until title and ownership of the Marketing Materials has passed to the Client, the Client shall:

20.2.1 not re-sell the Marketing Materials;

20.2.2 destroy, deface or obscure any identifying mark or packaging on or relating to the Marketing Materials;

20.2.3 take proper care of the Marketing Materials and take all reasonable steps to prevent any damage to or deterioration of them;

20.2.4 keep the Marketing Materials free from any charge lien or other encumbrance and store the Marketing Materials in such a way as to show clearly that they belong to Bluestone;

20.2.5 give Bluestone such information relating to the Marketing Materials as Bluestone may from time to time require;

20.3 Bluestone reserves the right to repossess and resell any of the Marketing Materials to which it has retained title, with the re-imbursement to the Client of any and all monies paid for them. Bluestone consents to the Client's possession of the Marketing Materials.

20.4 The Client grants an irrevocable right and licence to Bluestone and its employees and agents to enter the Client's Premises on reasonable notice during normal business hours for the purpose of inspecting and/or repossessing Marketing Materials to which it has retained title.

## 21. PUBLIC RELATIONS

21.1 The client shall indemnify Bluestone against liability, which may incur as a result of its publication or use in accordance with instructions given by the client of information provided or approved by the client.

## PART C

### 1 TERM

1.1 If any Services comprise a Term, the terms and conditions set out in this condition 1 shall apply.

1.2 The Services shall commence upon the signature of the Estimate and shall continue for the Term.

1.3 Upon expiry of any pre-defined Term, any Other Services shall continue (subject to earlier termination in accordance with the Contract) for further terms of one (1) year duration ("Subsequent Terms"), unless either party shall give to the other at least sixty (60) days notice to terminate, prior to the expiry of the Term or any of the Subsequent Terms.

1.4 Bluestone shall have the right to increase the Charges with effect from the anniversary of the commencement of the Term or Subsequent Terms. Such increase shall be notified to the Client at least ninety (90) days prior to the expiry of the Term or Subsequent Terms.