

# Terms & Conditions

## Definitions

Agreement	These terms and conditions and the front sheet agreed between the parties setting out the Client, Supplier, Feature, Charges and Date;
Client	The person, firm or company with whom the Supplier contracts;
Charges	The fees agreed between the parties;
Feature	The feature placed by the Client under this Agreement, including any other service;
Reviews	Content added to the website by users, that comments on a Client business;
Services	Any services provided under this Agreement;
Site	The website on which a Feature will be displayed, bearing the domain name thebestof.co.uk;
Supplier	The Supplier identified on the front sheet of this Agreement.

## Basis of the Agreement

1. The Supplier agrees to provide the Services to the Client and the Client agrees to pay the Charges in accordance with the terms of this Agreement.
2. An Agreement shall only be formed on acceptance by the Supplier of the Client's order.
3. These terms and conditions shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Client may purport to apply under any order or other document. In the case of any conflict or ambiguity between terms, this document shall prevail.
4. The Supplier may employ sub-contractors to carry out any part of its obligations under the Agreement at its sole discretion and it may assign its rights and obligations under this Agreement to any other party. The Supplier acts as principal in this Agreement. The Client may not assign its rights and obligations under this Agreement without the written consent of the Supplier.
5. Any variation of these terms and conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a duly authorised officer of the Supplier.
6. Any reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## Supplier's Responsibilities

7. The Supplier will display the Feature on the Site in the standard format applicable to the Feature chosen, using artwork supplied by the Client.
8. The Supplier will use its best endeavours to commence displaying the Feature within 2 weeks of receipt of complete and acceptable artwork, unless a different timescale is agreed between the parties. Time for commencement of display shall not be of the essence.
9. The Supplier will use its best endeavours to ensure that the Site is accessible and the Feature on display on the Site at all times for the duration of this Agreement. However the Supplier is a franchisee of the Site owner who is responsible for arranging management and hosting of the Site, and the parties recognise that the Supplier does not have control of these matters.
10. The Supplier makes no warranty as to the usage of the Site, which the parties recognise is beyond the control of the Supplier.
11. In the event of Site being inaccessible for a continuous period of more than 7 days or permanent closure of the Site, in either case for technical or other reasons, the Supplier reserves the right at its discretion to:
  - a. transfer the Feature to an alternative suitable site, such suitability to be determined by the Supplier alone acting at its discretion; or
  - b. refund a proportionate part of the Charges to the Client.
12. The Supplier will moderate Reviews that are posted on the Site to ensure they comply with the Review Guidelines and are free of abusive language, personal issues, insults and hearsay.
13. The Supplier has no other responsibility for the content of the Reviews.

## Client's Responsibilities

14. The Client will provide the Supplier with such text, artwork, information, copies, logos, drawings and designs, and will do so in such formats and at such time or times, as the Supplier may reasonably need to produce the Feature and to perform the Services in accordance with this Agreement. The Client is responsible for ensuring that such material and answers are accurate and complete.
15. The Supplier reserves the right to edit, amend or refuse to accept proposed Features which it considers to be offensive, unlawful or inappropriate, or which appear to infringe the intellectual property rights of any third party.
16. If the Client fails to produce such artwork and other material in accordance with clause 14, or supplies only material which the Supplier considers to be offensive, unlawful or inappropriate or which appear to infringe the intellectual property rights of any third party, the Supplier reserves the right to produce a basic Feature to its own design to promote the Client's business, without seeking the Client's approval, for the remaining term of this Agreement or until suitable artwork and other material is supplied, whichever is sooner.
17. The Client will obtain all necessary licences or consents that may be needed in connection with the content or display of the Feature and the use of the artwork and other material supplied by it and it shall indemnify the Supplier in full against any costs, claims, demands or expenses which the Supplier may incur as a result of breach by the Client of this clause. We will confirm receipt in writing. If no confirmation is received by you this could mean that the notice has not been received by us. For clarity, if you do not receive confirmation from thebestof that notice has been received, it must be assumed that notice has not been received by us.
18. The Supplier will notify the Client when the Feature first appears on the Site. Within 7 days of receipt by the Client of such notice, the Client shall notify the Supplier in writing of any changes required. The Supplier shall, however, be entitled to rely upon verbal approval, changes or other instructions received from the Client.
19. If no such notification is received within that period, the Client shall be deemed to have accepted the Feature content. After acceptance, whether deemed or otherwise, the Client shall not be entitled to reject the Feature nor to have any changes made by the Supplier, whether or not it complies with any material supplied by the Client, without the consent of the Supplier in which event the Supplier may levy reasonable additional charges for such work.
20. The Client may request that the Supplier makes changes to the Feature at any time in writing, but the Supplier may levy reasonable additional charges for such work.
21. The Client accepts that the Supplier is not responsible or accountable in any way for the content of any reviews of the Client that may be published on the Site.

## Payment Provisions

22. The Charges will be paid in advance in equal monthly instalments on the date of this Agreement and monthly thereafter, according to the option chosen by the Client. The initial set-up fee shall be paid on the date of this Agreement.
23. The Client shall pay the Charges by standing order or direct debit, and the Supplier reserves the right to change to required payment method by notice.
24. The Supplier reserves the right by giving notice to the Client at any time to increase the Charges or to raise additional charges payable within 14 days if:
  - a. the Client requests changes to the Feature, save within 7 days of receipt of notice under clause 18;
  - b. the Client agrees to any change to the Feature proposed by the Supplier;
  - c. Services are required by the Client with exceptional urgency;
  - d. the Client fails to give the Supplier adequate or accurate material in accordance with this Agreement.
25. The Supplier reserves the right by giving not less than 28 days notice to the Client to increase the Charges on any anniversary of this Agreement, provided that in the event of an increase under this clause exceeding the aggregate increase to the RPI over the previous 12 months, the Client may terminate this Agreement by notice in writing served on the Supplier before the commencement date of the new pricing level.
26. Unless alternative payment provisions are agreed, the Supplier may submit an invoice or invoices annually or in respect of each or any instalment of the Charges. Invoices shall be sent to the Client's address recorded in this Agreement unless otherwise agreed.
27. All sums due under the Agreement will be paid by the Client by their due date without any deduction, set-off, counterclaim or abatement and time for payment shall be of the essence.
28. The Charges do not include VAT or any similar sales tax, impost or custom duties which will be paid additionally by the Client at the then prevailing rate.
29. No act or omission of the Client which prevents the Supplier from continuing to perform the Agreement or to perform it according to any agreed time-scale shall prevent the Client from raising invoices in accordance with this Agreement.
30. If the Client fails to make any payment within the time specified in this Agreement the Supplier may take any or all of the following steps:
  - a. suspend the display of the Feature until payment is made in full;
  - b. cancel the Agreement between the Supplier and the Client;
  - c. immediately demand the balance of the Charges for the year concerned in advance of the further supply of any Services;

- d. charge the Client interest both before and after any judgement on the amount unpaid at the rate of 4% per annum above the Lloyds TSB Bank Plc base lending rate from time to time until payment in full is made, accruing on a weekly basis;
- e. appropriate any payment made by the Client and set-off any monies due to the Client, whether under this Agreement or any other contract or otherwise (including any VAT applicable), to or against the unpaid invoice or invoices. In addition, if any payment is not made within 14 days of it falling due, the Supplier reserves the right to appoint debt collectors and the Client agrees to be liable for the fees of such Collectors.

## Intellectual Property

31. Any intellectual property rights in the Feature, save for that attaching to any logos, designs, names and other material originally supplied by the Client, shall remain the property of the Supplier. No right or licence is granted by this Agreement.
32. The Client may not use or reproduce in any form any of the reviews on the Site without the prior written consent of the Supplier.
33. To the extent that the Client supplies the Supplier with any original copyright or other protected material, the Client grants a licence to the Supplier to publish, reproduce, adapt, and otherwise use without limitation any such material for the purposes of its performance of this Agreement but not otherwise.
34. At termination any unused Feature or other material prepared by the Supplier, whether the subject of copyright or not, shall remain the Supplier's property and shall not be used by the Client subsequently without the written consent of the Supplier.

## Warranties and Indemnities

35. The Client warrants that it has not relied on any representations made by or on behalf of the Supplier save as contained in this Agreement.
36. The Client warrants that any copy, logo, specification, design, instruction or other material supplied by it to the Supplier, and any proof approved by the Client, will not infringe any intellectual property or other rights of any third party, nor will it be defamatory or otherwise unlawful, nor infringe the Trade Descriptions Acts, and the Client will indemnify the Supplier in respect of any claim relating to such infringement.
37. The Client warrants that all the facts, claims and offers given by it about its products or services are accurate and in no way misleading and that the terms of any offers contained therein will be honoured.
38. This Agreement is between the Client and the Supplier and it places no rights, liabilities or obligations upon the owners of the Site or their associated companies or assignees.

## Limitation of Liability

39. The Supplier shall not be responsible for any errors in the Feature or any unsatisfactory Services which are not notified in writing to it in accordance with clause 18, nor for any errors which are approved by or are the fault of the Client or any third party.
40. The terms of this Agreement represent the whole agreement between the parties and all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise including (without limitation) as to the condition, quality, performance or fitness for purpose of any goods or the standard of care used in the provision of services are hereby expressly excluded from the Agreement save as prohibited by law.
41. The Supplier shall not be liable under contract, tort (including negligence) or otherwise for any loss of production, loss or corruption of data, loss of profits or of contracts, loss of operation time, loss of goodwill and loss of anticipated savings, nor for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused.
42. Save where its liability cannot be limited by law, the Supplier's total liability (whether in contract, tort including negligence or otherwise) under or in connection with this Agreement or based on any claim for indemnity or contribution shall not exceed two times the Charges then payable for a 12 month period in aggregate.
43. The Supplier shall not be liable for any change to the content of the Feature if the variation does not materially affect the characteristics of the Feature, and the substituted materials and content (if any) are of comparable quality to the originals.
44. The parties recognise that the nature of websites is that complete continuity of access to the Site cannot be guaranteed.
45. The Supplier shall be under no obligation to restrict or limit the type or number of Clients which may Feature on the Site, and without limitation, the Client shall have no recourse in the event that a competitive or conflicting business is Featured.
46. The Supplier shall not be liable for the contents of any Review that is posted on the site, or any user generated comment, whether or not the Review or Comment has been moderated by The Supplier.

## Duration and Termination

47. This Agreement shall commence on the Commencement Date and shall continue in effect for an initial period of 12 months and thereafter until terminated by either party serving not less than 3 months written notice on the other expiring at any time after the 1st anniversary.
48. The Supplier may terminate this Agreement or suspend its performance with immediate effect on written notice if the Client:
  - a. ceases or threatens to cease to carry on its business or becomes insolvent, has a receiver or administrator appointed, makes any arrangement for the benefit of its creditors goes into liquidation or enters into any other insolvency process;
  - b. commits a material breach of this agreement and (in the case of a breach capable of remedy) fails to remedy it within 7 days of receipt of written notice from the Supplier specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;
  - c. has an average rating of 'not recommended' based on more than 4 published Reviews on the Site;
  - d. in the opinion of the Supplier, is not providing sufficiently high levels of service or customer care and is adversely affecting the credibility and reputation of the Site;
  - e. defaults in paying any sums due to the Supplier under this Agreement.
49. In the event of termination by the Supplier, the Supplier shall reimburse to the Client any advance payment of the Charges made in respect of periods following termination, subject to deduction of any sums due to the Supplier.
50. Termination of this Agreement shall not affect any rights of the parties accrued to them up to the date of termination.

## Miscellaneous

51. Neither party shall be liable for any delay in performing or failing to perform any of its obligations under this Agreement due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or other force majeure event beyond the reasonable control of either party.
52. All notices to be given under this Agreement shall be in writing and shall be sent to the normal business address of the party concerned as set out in this Agreement by first class post or by hand.
53. No delay or failure by the Supplier to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them and any waiver, to be effective, must be in writing.
54. If any part of this Agreement is found by a court or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.
55. Both parties shall keep confidential all material concerning the business affairs of the other which shall be disclosed in the course of performance of this Agreement, save for any information in the public domain.
56. The Supplier shall be entitled to set-off against any monies payable to it by the Client under this Agreement, any monies which may be payable by it to the Client, whether under this Agreement or otherwise. The Client shall not be entitled to any right of set-off.
57. This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supercedes all previous communications, representations and other arrangements, written or oral.
58. If your business receives poor feedback thebestofjersey reserves the right to terminate your contract.
59. thebestofjersey reserves the right to terminate your contract without prior notice and without refund should there be reasonable grounds.

## Personal Information

60. The supplier may use a Client's personal information to communicate with Clients via email newsletters or other avenues to offer marketing information and other communications to assist in business related activities.
61. By signing this agreement, the Client will be indicating your agreement to receive marketing messages unless the Client has indicated an objection by ticking this box
62. If a Client wishes not to have their information used for these purposes, they may elect to opt-out from future communications by notifying the supplier in writing to the registered address on this agreement or using the unsubscribe link in any email communication.