

Torchbox General Terms and Conditions

G-Cloud 14

1. RELATIONSHIP BETWEEN TERM

- 1.1 These terms and conditions, including its Appendices (“Terms and Conditions”) are to be incorporated into each Statement of Work (and its Appendices).
- 1.2 The Services to be provided to the Client will be detailed in the Statement of Work. The Client may from time to time request the provision of further Services and if Torchbox agrees to provide such Services then a further Statement of Work or a variation of an existing Statement of Work may be agreed. All Statements of Work are automatically made on these Terms and Conditions and any changes to these Terms and Conditions must be mutually agreed in writing by authorised representatives of the Parties and attached as a signed variation. For the avoidance of any doubt the Client agrees that any document that purports to amend these Terms and Conditions and which is not in compliance with this Clause 1.2 (including without limitation any purchase order or

purchase order confirmation or similar document that carries terms not expressly included in these Terms and Conditions or a relevant Statement of Work) shall be of no effect. Should for any reason Torchbox carry out Services at the request of the Client which are not detailed in a Statement of Work, such Services shall be deemed subject to these Terms and Conditions and for that purpose shall be deemed to be a Statement of Work.

- 1.3 Each Statement of Work constitutes a separate agreement on the terms of the General Terms and Conditions and their Appendices. The commencement date and the duration of each Statement of Work shall be as set out in that Statement of Work. Termination of any one Statement of Work shall not affect termination of any other Statement of Work (although this shall not prevent more than one Statement of Work being subject to termination if termination circumstances apply to them). The limitations of liability in Clause 11 cover these Terms and Conditions including all the Statements of Work (and their Appendices) in aggregate.
- 1.4 If there is any conflict or inconsistency between any provision of these Terms and Conditions and any Statement of Work these Terms and Conditions shall prevail unless specifically stated in writing and signed by both parties in a Statement of Work with reference to this Clause 1.4, in which case the terms of the relevant Statement of Work shall prevail.

2. TERM

- 2.1 These Terms and Conditions shall commence on the date when they have been signed by all the parties and shall continue, unless terminated earlier in accordance with Clause 9, until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the first anniversary of the commencement of these Terms and Conditions

and shall expire on the completion of all Statements of Work entered into before the date on which it is served.

- 2.2 If there are no uncompleted Statements of Work as at the date notice to terminate is served under Clause 2.1, such notice shall terminate these Terms and Conditions with 30 days from termination notice.
- 2.3 The parties shall not enter into any further Statements of Work after the date on which notice to terminate is served under Clause 2.1.

3. SERVICES

- 3.1 Torchbox agrees to provide the Services to the Client in consideration for the Price and in accordance with these Terms and Conditions and an applicable Statement of Work.
- 3.2 The Services, Deliverables, and Price shall be determined as follows:
 - (a) If the Client desires specific services, it will notify Torchbox in writing, setting out:
 - (i) a brief description of the desired services;
 - (ii) the applicable time-frame for delivery of the services and any deliverables; and
 - (iii) an initial draft of the likely specification including where appropriate an indication of the desired budget.
 - (b) The Client and Torchbox will negotiate the quote in good faith and will jointly draft then both sign a corresponding Statement of Work together with applicable Appendices.

- 3.3 All dates and timescales given or agreed to by Torchbox in respect of a Statement of Work shall be estimates only save that Torchbox shall use reasonable commercial endeavours to meet and achieve such dates and timescales.
- 3.4 Torchbox may from time to time provide the Client with support services set out in Ad Hoc and Sprint Support Services Appendix, provided the Client has fully paid any fees applicable to the support.

4. TORCHBOX'S OBLIGATIONS

- 4.1 Torchbox undertakes to provide the Services according to the Statement of Work agreed between the parties and on these Terms and Conditions.
- 4.2 Torchbox shall provide its services under these Terms and Conditions with the skill and care to be expected of a provider of services involving the design and implementation of websites, content management systems and bespoke software. Notwithstanding anything to the contrary in these Terms and Conditions and/or in any document which relates to the Services provided by Torchbox to the Client, Torchbox shall be able to make changes to the Statement of Work to the extent that these changes are not material and made with the intention of meeting the agreed Deliverables.
- 4.3 Torchbox may sub-contract its obligations under these Terms and Conditions provided that it remains primarily liable for the acts and omissions of its sub-contractors.

5. DELIVERY MANAGEMENT

5.1 Torchbox shall:

- 5.1.1 make available as many person days of effort as are from time to time required to perform the Services under a Statement of Work;
- 5.1.2 ensure that its personnel providing the Services individually possess suitable skills and experience and that they are as a team suitably qualified to carry out the work included in the relevant Statement of Work.
- 5.1.3 Unless otherwise agreed in the Statement of Work, a written record of matters of substance discussed at meetings or in telephone conversations between the parties will be supplied by Torchbox to Client within a reasonable time and in any event not less than five (5) Business Days after such discussions. If the subject matter of a written record is not challenged by Client within five (5) Business Days of its receipt, it will be deemed to be a correct record of the meeting or telephone conversation to which it refers.

6. CLIENT'S OBLIGATIONS

6.1 The Client shall:

- 6.1.1 deliver the Client Materials to Torchbox as soon as reasonably practicable as and when requested by Torchbox and in the agreed format; and
- 6.1.2 make appropriate personnel available as soon as reasonably practicable to respond to all queries reasonably raised by

Torchbox and relating to the Services from time to time; and

- 6.1.3 provide adequate notice of cancellation or postponement of the agreed timeline for delivery of Services.

7. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

- 7.1 Neither Party shall have any claim or interest in the other Party's Intellectual Property Rights.
- 7.2 The Client acknowledges that all Intellectual Property Rights (including any new Intellectual Property Rights) arising out of or in connection with the provision of the Services (including for the avoidance of any doubt any related to software, the Deliverables and materials supplied as part of the Services) belong at all times to Torchbox and or Torchbox's licensors unless otherwise expressly stated in a variation agreement made in accordance with Clause 1.2.
- 7.3 To the extent that a Deliverable incorporates Torchbox's Intellectual Property Rights, Torchbox hereby grants to the Client the non-exclusive, royalty-free, non-sub-licensable and perpetual right to use the relevant Rights in the Deliverables in any medium and for any commercial purpose without any additional payment to be made to Torchbox unless otherwise stated in the Statement of Work.
- 7.4 Torchbox warrants that it is not aware as at the date of these Terms and Conditions that the Software, any materials supplied as part of the Services, information, data, computer facilities or material that Torchbox supplies, or any provision of the Services by Torchbox or the Client's use of the same in accordance with these Terms and Conditions infringes any

third party's Intellectual Property Rights ("Infringement Claim").

- 7.5 Torchbox shall only be liable under these Terms and Conditions for an Infringement Claim or alleged Infringement Claim if (i) the Client promptly notifies Torchbox of any infringement or alleged infringement of which the Client has notice; (ii) the Client makes no admission as to liability or agree any settlement of such claim without prior written consent from Torchbox; (iii) the Client allows Torchbox (or a relevant third party supplier), at Torchbox's expense, to conduct and/or settle all negotiations and litigation arising from any claim or action relating to the alleged infringement; and (iv) the Client, at Torchbox's expense, give to Torchbox (or a relevant third party supplier) such reasonable assistance as may be requested in such settlement or negotiation.
- 7.6 Torchbox shall have no liability for any Infringement Claim or alleged Infringement Claim to the extent such claim (i) arises from possession, use, development, modification, or operation of the Services (or supplied software or hardware or part thereof) by the Client other than in accordance with these Terms and Conditions or the relevant Statement of Work; (ii) failure by the Client to take any corrective action directed by Torchbox; or (iii) is based upon any item provided by Torchbox and incorporated into the Services (or supplied software and / or hardware or part thereof) at the Client's request.
- 7.7 Subject to clauses 7.5 and 7.6 Torchbox hereby indemnifies and holds harmless the Client against all actions, claims, losses, costs, damages and expenses (including without limitation, all reasonable and actually incurred legal fees, costs or expenses and any compensation, costs or disbursements paid by the Client to compromise or settle any action or claim) suffered or incurred by the Client and arising by reason of or in connection with a claim by a third party that the use of the Deliverables by the Client or by the Client's Clients is a breach of that third party's

Intellectual Property Rights.

- 7.8 The Client shall indemnify Torchbox against all costs, claims, demands, expenses (including reasonable legal costs) and liabilities of whatever nature incurred by or awarded against Torchbox arising out of or in connection with any claim that Torchbox's use or access of the Client Materials pursuant to these Terms and Conditions infringes the Intellectual Property Rights of any third party.

8. PRICE AND PAYMENT

- 8.1 In consideration of performance of Torchbox's obligations under these Terms and Conditions, the Client shall pay Torchbox the Price according to the payment terms set out in the Statement of Work, or failing that within thirty days of issue of an invoice.
- 8.2 The fees are inclusive of all labour and materials. All fees are exclusive of any applicable value added tax, for which the Client shall be additionally liable.
- 8.3 All payments to Torchbox by the Client shall be made after receipt of an invoice from Torchbox. All payments shall be made in British Pounds and by a cheque or bank transfer to the account of Torchbox at a bank to be nominated in writing by Torchbox.
- 8.4 Client shall reimburse Torchbox for expenses incurred by Torchbox in providing the Services in accordance with Torchbox's company policy, including travel and related expenses.
- 8.5 If the Client fails to make any payment to Torchbox on the due date then, without prejudice to any other right or remedy available to Torchbox:

- 8.5.1 if payment is delayed more than 7 days after the due date, Torchbox may suspend performance of its obligations under these Terms and Conditions until such payment is received; and/or
 - 8.5.2 Torchbox shall be entitled to charge the Client interest (both before and after judgement) on the amount outstanding on a daily basis, at the rate of 4% per annum above the base rate of HSBC Bank plc from time to time in force (or such other clearing bank as Torchbox may nominate) such interest to be calculated from the due date to the date of actual payment (both dates inclusive), compounded quarterly. Torchbox may suspend part or all of the Services until payment has been made in full.
- 8.6 Where these Terms and Conditions are entered into as a framework agreement, each time a new Statement of Work is entered into, Torchbox reserves the right to increase the price.
- 8.7 If the Client postpones or cancels any Services, Torchbox reserves the right to recoup losses incurred when redeployment of committed resources is not possible. In the event of postponement or cancellation, the following charges may apply:
- 8.7.1 no charges if the Client gives at least 6 weeks' notice or where an agreement is reached about rescheduling; or
 - 8.7.2 50 % of the charges if the Client cancels or reschedules between 2 weeks and 6 weeks of the agreed commitment date; or
 - 8.7.3 full charges if the Client cancels or reschedules less than two weeks before the agreed commitment date.

9. TERMINATION

- 9.1 Torchbox shall be entitled to terminate any Statement of Work by giving not less than 30 days' written notice to the Client if there is at any time a material change of control (as that phrase is defined in Section 840 of the Income and Corporation Taxes Act 1988) of the Client.
- 9.2 Either party shall be entitled forthwith to terminate any Statement of Work by written notice to the other if:
- 9.2.1 the other party commits any material breach of these Terms and Conditions and (where such breach is capable of remedy) has failed to remedy such breach in all material respects within 30 days after notification that it is in breach; or
 - 9.2.2 an encumbrancer takes possession or a receiver, administrator or similar officer is appointed over any of the property or assets of that other party or there is any enforcement of any security over any assets of the other party; or
 - 9.2.3 that other party makes any voluntary arrangement with its creditors pursuant to the Insolvency Act 1986, or suspends payment to creditors; or
 - 9.2.4 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under these Terms and Conditions; or
 - 9.2.5 that other party ceases, or threatens to cease, to carry on

business; or

9.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party.

9.3 Without prejudice to any other right or remedy available to it, Torchbox may terminate these Terms and Conditions with immediate effect if the Client fails to pay any amount due under these Terms and Conditions on the due date for payment and remains in default not less than ten (10) Business Days after being notified in writing to make such payment.

10. CONSEQUENCES OF TERMINATION

Upon the termination of these Terms and Conditions for any reason:

10.1 Subject to Clause 2.1, all existing Statements of Work shall terminate automatically.

10.2 outstanding unpaid invoices rendered by Torchbox in respect of the services provided under any Statement of Work shall become immediately payable by the Client and invoices in respect of services carried out prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of the invoice;

10.3 except as otherwise provided in these Terms and Conditions or any Statement of Work, and subject to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under these Terms and Conditions.

10.4 the following clauses/Appendices shall continue in force: Definitions Appendix, General Terms and Conditions: Clauses 7 (Ownership of Intellectual Property Rights), Clause 10 (consequences of termination),

Clause 11.2 (Limitation of Liability), Clause 12 (Confidentiality and Publicity), Clause 14.2 (ADR), Clause 16.7 (Governing Law), Data Processing Appendix, Product Development using Agile Appendix: Clauses 3 (Warranty on Client Bespoke Code) and Clause 4 (Warranties and Indemnities).

11. LIABILITY

- 11.1 Except where it is a breach of these Terms and Conditions, Torchbox shall have no liability to the Client for any loss or damage whatsoever arising out of or in connection with these Terms and Conditions or the services provided hereunder whether arising in contract, tort (including negligence and breach of statutory duty) or otherwise.
- 11.2 Subject to Clause 11.4 below Torchbox's total aggregate liability to the Client in connection with these Terms and Conditions (including its Appendices) or any Statement of Work in any one calendar year shall not exceed 125% of the amount received by Torchbox (excluding tax) from the Client under the relevant Statement of Work in such calendar year.
- 11.3 Subject to 11.4, neither Party shall, in any event, be liable or responsible to the other for any:
 - 11.3.1 loss of documentation, loss or corruption of data, loss of profits or of contracts, remedial costs, loss of operation or staff time, costs of obtaining substitute products or services and loss of goodwill or anticipated savings (in each case whether direct or indirect); or
 - 11.3.2 indirect, incidental, special or consequential loss, damage, cost or expense of any kind whatsoever; and in each case howsoever

caused whether arising under contract, tort (including negligence and breach of statutory duty) or otherwise, even if it has been advised of the possibility of such loss.

- 11.4 The express warranties given in these Terms and Conditions are in lieu of all warranties, conditions, terms, representations, undertakings and obligations (express or implied) imposed by statute, common law or otherwise all of which are hereby excluded to the maximum extent permitted by law.
- 11.5 The above exclusions and limitations shall apply to the fullest extent permissible at law but neither Party excludes or limits liability for death or personal injury caused by its negligence or that of its employees or agents and for which it is responsible, or for fraud or wilful deceit.
- 11.6 The Client acknowledges that the exclusions set out above are fair and reasonable in all the circumstances and that the exclusions and limitations of liability set out above are reasonable notwithstanding that they may have the effect of protecting Torchbox from losses for which it may be insured (and the Parties acknowledge that there are sound commercial reasons for so doing, such as maintaining a good insurance claims record).
- 11.7 No indemnity in these Terms and Conditions shall be effective to the extent that it has the effect of excluding or restricting liability as set out in Clause 11.4.

12. CONFIDENTIALITY AND PUBLICITY

- 12.1 Each Party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or by any legal or regulatory

authority, any confidential information concerning the business or affairs of the other Party (or of any member of the group of companies to which the other Party belongs) which comes to its knowledge and each of the Parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

- 12.2 Client permits its name to be added to Torchbox's client list, and for Torchbox to feature or otherwise include Client's projects in Torchbox's online and offline portfolios and case studies.

13. DATA PROTECTION

- 13.1 Both Parties will comply with the provisions contained in the Data Processing Appendix.

14. ESCALATION AND ADR

- 14.1 If any dispute or grievance arises between the Parties out of these Terms and Conditions, before taking any further action (such as requiring the Party in default to remedy an alleged fault within a specific time), each Party agrees that it will be discussed between a representative of each Party who is a board director or of equivalent executive authority and who has authority to settle the dispute and who has, where possible, no direct involvement in the relevant matter.
- 14.2 Should the escalation mechanism set out in clause 14.1 fail to be effective, the Parties will attempt to settle the dispute or grievance by mediation in accordance with the Centre for Dispute Resolution Model Procedure, or, failing that, a procedure administered by such other similar organisation

as the President for the time being of the Law Society of England and Wales shall nominate. Unless the Parties agree otherwise, the costs of the mediation shall be borne equally by each of them.

15. FORCE MAJEURE

- 15.1 Neither Party shall be liable for delay in performing or failure to perform obligations under these Terms and Conditions if the delay or failure results from force majeure.
- 15.2 For the purposes of these Terms and Conditions, "force majeure" shall mean any Act of God, war, riot, act of terrorism, outbreak of hostilities, strike or other industrial action of any kind, malicious damage, default of suppliers or sub-contractors, accident, failure or breakdown of plant or machinery, fire, flood, explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the Party affected.
- 15.3 In the event of any delay or failure under these Terms and Conditions resulting from force majeure a Party may rely on the provisions of this Clause for exemption from liability for non-performance, part performance, defective performance, or delay and in the event that any such delay or failure continues for a period in excess of 120 consecutive days, a Party shall have the right to terminate these Terms and Conditions with immediate effect.
- 15.4 In the event of any force majeure (including a sequence of events of force majeure) which has lasted or is likely to last for longer than 7 days the Parties agree to discuss in good faith whether the respective rights and obligations of each Party under these Terms and Conditions can be amended in order to alleviate the effects of the force majeure and best

bring into effect the original intentions of the Parties.

16. GENERAL

- 16.1 In these Terms and Conditions, capitalised words and phrases shall bear the meanings set out in the Definitions Appendix.
- 16.2 References in these Terms and Conditions to the Parties shall include their respective heirs, successors in title permitted assigns and personal representatives.
- 16.3 If any Party fails to rely on its rights under these Terms and Conditions or otherwise, that shall not prevent it from relying on those (or similar) rights in the future.
- 16.4 The provisions of these Terms and Conditions, and the rights and remedies of the Parties under it are cumulative and are without prejudice and in addition to any rights or remedies a Party may have at law or in equity. No exercise by a Party of any one right or remedy under these Terms and Conditions, or at law or in equity, shall (save to the extent, if any, provided expressly in these Terms and Conditions, or at law or in equity) operate so as to hinder or prevent the exercise by it of any other such right or remedy.
- 16.5 If any provision of these Terms and Conditions is found by a court or other competent authority to be void or unenforceable:
- 16.5.1 that provision shall be deemed to be deleted from these Terms and Conditions and the remaining provisions of these Terms and Conditions shall continue in full force and effect; and
- 16.5.2 a mutually satisfactory provision to be substituted for that

provision.

- 16.6 Any notice given under these Terms and Conditions shall be in writing and shall be delivered or sent by e-mail to the address of the relevant party, or to such address within the United Kingdom as subsequently notified to the other party/ies pursuant to this clause. In the case of post, the notice shall be deemed to have been received 72 hours after it was emailed.
- 16.7 These Terms and Conditions are not intended to convey a benefit on any person not a party to it and accordingly the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded.
- 16.8 These Terms and Conditions shall be governed by the laws of England and the Parties agree to submit to the non- exclusive jurisdiction of the Courts of England & Wales.
- 16.9 By signing these Terms and Conditions, Client agrees that these Terms and Conditions including its Appendices shall be incorporated into and shall apply to each Statement of Work (and its applicable Appendices).
- 16.10 In addition, when these Terms and Conditions are signed below, they shall take effect as a framework agreement, and any Statement of Work entered into subsequently will be subject to these Terms and Conditions and any rate card to the Statement of Work attached shall be followed for the Term of this Agreement.

For and on behalf of
TORCHBOX LIMITED
acting by a Director

For and on behalf of
[Client]
acting by a Director

Full name

Full name

Title

Title

Signature

Signature

Date

Date

Appendix - Definitions and Interpretation

Insert Client Name

Agreement

means the agreement formed by the Parties by

entering into a Statement of Work on the General Terms and Conditions (including its Appendices);

Parties

Torchbox and the Client, and "Party" shall be construed accordingly;

Business Day

means any day between 9 - 5.30 p.m on which commercial banks in London are open for business, excluding Saturdays, Sundays, public holidays in England and the period between Christmas and New Year inclusive;

BSD

means the BSD license as defined by the Open Source Initiative;

Confidential Information

means all business, technical, financial or other information created or exchanged between the parties under these General Terms and Conditions and any Statement of Work including the existence of the General Terms and Conditions and any Statement of Work;

Client Bespoke Code

means code created by Torchbox specifically for the Client under a Statement of Work, subject to the provisions of Product Development Work Appendix;

Client Materials

means any and all text, data, graphics, logos, images, stock photography, moving images, sound, licensed music, illustrations, non-standard fonts, visual identity or brand guidelines, code, software, access to Client's accounts with providers of third party services,

	access to any required APIs and data feeds, access to Client's hosting environment, and any other materials provided by the Client;
Deliverables	means the specific deliverables pursuant to the Services, as set out in a Statement of Work signed by the Parties;
Discovery Phase	means the initial phase of work in a Project during which the scope of the Project is established and the Project Plan agreed;
Intellectual Property Rights	means any and all patents, trademarks, rights in domain names, rights in designs, copyrights, rights in confidential information and all other intellectual property rights of a similar or corresponding character which may subsist now or in the future;
Publicly Available Code	means software source code, database structures, XML schemas, HTML code or any other code which is generally available to the public on the internet;
Statement(s) of Work	means the document signed by the Parties, setting out and specifying in Statement of Work, the details of the particular Services (and where applicable any software and/or hardware) to be supplied under together with the Functional Specification where applicable;
Services	means the Services provided by Torchbox to the Client under a Statement of Work;

the Functional Specification	means the specification which will be developed by the parties and amended pursuant to the General Terms and Conditions from time to time and as may be set out in the Statement of Work where applicable;
the Price	means the fees to be paid by the Client to Torchbox in accordance with Clause 8.1 of the General Terms and Conditions;
the Project	means the work carried out under a relevant Statement of Work;
the Project Plan	means the timetable for a Project as amended pursuant to these Terms and Conditions from time to time;
the Software	means all software delivered by Torchbox to the Client under a Statement of Work;
Third Party Code	means all Publicly Available Code and any other code in which the copyright is owned by a third party;
Torchbox Code	means code, other than Publicly Available Code, in which the copyright is owned by Torchbox, whether in existence prior to the date of this Agreement, or which is created or developed during the Term of this Agreement but which is reasonably determined by Torchbox to be part of its generally reusable materials;

