

CycleStreets – cycle routing

Terms:

Embedded cycle journey planner (white label site)



www.cyclestreets.org

1 Definitions

In this agreement unless the context otherwise requires the following expressions have the following meanings:

“Customer’s Personnel”	means such authorised personnel of the Customer as shall on behalf of the Customer be responsible for managing all issues relating to the performance of this agreement and who shall be notified to CycleStreets in writing from time to time.
“Delivery Date”	XXX
“Domain Name”	means the DNS domain name or URL by which the Website is to be accessed by members of the public
“Geographical Information”	all geographical information, including any from which maps or routes are drawn, that is used by the Website
“Geographical Area”	the County/Country of XXX
“Live Date”	means the date on which password protection is first removed from the Website at the Customer's request in accordance with clause 2(4) of this agreement.
“the Service”	means the service identified in Schedule 1.
“Price”	the sum of £XXX
“Start Date”	the date on which this agreement is made.
“Snag Completion Date”	28 days after the Delivery Date
“Website”	means the CycleStreets embedded cycle journey planner website provided by CycleStreets at the Domain Name in accordance with this agreement.

2 Responsibilities of CycleStreets

- (1) CycleStreets will host the Website as described in Schedule 1 on the Delivery Date.

- (2) The Website provided under clause 2(1) will, initially, be accessible only by the use of a password, which will be supplied to the Customer on the Delivery Date.
- (3) CycleStreets will, between the Delivery Date and the Snag Completion Date and at the Customer's request:
 - a) correct any non-conformity between the Service and its specification in Schedule 1
 - b) comply with any reasonable changes to the website requested by the Customer that will take less than half a person day to complete.
- (4) CycleStreets will remove password protection from the Website at the Customer's request, whereupon the Website will be accessible to the internet as a whole.
- (5) CycleStreets will exercise such reasonable skill care and diligence as would be expected of an experienced provider of website hosting services.
- (6) CycleStreets will, on request by the Customer's Personnel, immediately suspend availability of the Website over the Internet. CycleStreets will likewise on request by the Customer's Personnel promptly resume the provision of access to the Website following any such suspension.
- (7) CycleStreets undertakes to notify the Customer forthwith of any attack or any attempted attack on the Website by a third party of which it becomes aware (whether caused by an attempt to modify the data on the Website or by increased access to the Website so as to deny legitimate users access to the Website) and to provide such reasonable assistance to the Customer (at the Customer's expense) as may be necessary to enable the Customer to take action against any such third party attacking or attempting to attack the Website.

3 Ownership of the website and domain names

- (1) CycleStreets acknowledges the Customer's right to the Domain Name and nothing in this agreement shall operate as an assignment to CycleStreets of the Domain Name.
- (2) The Customer acknowledges and agrees that the copyright, database right, trademarks, trade names, patents, and all other intellectual property rights subsisting in the Website, other than any rights in the Domain Name, shall remain vested in their original owners (whether CycleStreets or a third party) and their licensors and nothing in this agreement shall operate as an assignment to the Customer of such intellectual property rights.
- (3) CycleStreets confirms it has the legal right to the use of the copyright, database rights, trademarks, trade names, patents and all other intellectual property rights subsisting in the Website and hereby indemnifies the Customer against all damages losses and expenses arising out of any action or claim of infringement from the original owners of such intellectual property rights.

4 Customer obligations, undertakings and indemnities

- (1) The Customer will be responsible for maintaining the Domain Name in accordance with the option selected in Schedule 1 so that it resolves to the Internet Protocol address or

addresses of the Website as supplied by CycleStreets from time to time and the Customer agrees that it is entirely responsible for any loss of availability to the Website caused by its failure to do so.

- (2) The Customer acknowledges that CycleStreets does not operate or exercise control over, and (other than in the case of gross negligence on the part of CycleStreets) accepts no responsibility for the Geographical Information. The Customer will not pursue any legal claim against CycleStreets (other than in the case of gross negligence on the part of CycleStreets) arising from the nature or quality of the Geographical Information.

5 Payment

- (1) The Customer shall pay the Price as follows:
 - a) one half on the Start Date;
 - b) the remaining half on the Snag Completion Date.
- (2) All charges payable by the Customer shall be payable within 30 days after the receipt by the Customer of CycleStreets's invoice.
- (3) The charges payable under this agreement are exclusive of Value Added Tax.

6 Data protection

In performing its Services under this agreement CycleStreets may process (albeit for diagnostic or investigative purposes only) personal data belonging to the Customer. CycleStreets hereby warrants to the Customer that in such circumstances it will in respect of such personal data observe all the obligations pertaining to a data processor under the Data Protection Act 1998 and will indemnify the Customer against all breaches of the said Act by CycleStreets in respect of the Customer's data.

7 Amendments

In addition to the provisions contained in clause 11 no variation to the provisions of this agreement shall be of any effect unless made in writing and agreed and signed by both parties.

8 Commencement and termination

- (1) This agreement shall commence on the Start Date and continue for a period of 3 years from and including the Delivery Date.
- (2) If CycleStreets reasonably believes that:
 - a) some or all of the Geographical Information is subject to intellectual property rights belonging to one or more third parties which would prevent it from being used to supply the Service without payment by CycleStreets;
 - b) there is no other reasonable source of information that would substitute for the information described in clause 8(2)(a); and
 - c) as a result CycleStreets is unable to continue to supply the Service

then CycleStreets may terminate the agreement by sending 14 days notice in writing of termination to the Customer.

- (3) This agreement may also be terminated forthwith by either party on giving notice to the other if the other party is in material breach of the terms of this agreement and has failed to rectify such breach (in the case of a breach capable of being remedied) within 30 days of receiving a written notice from the other party requiring it to do so.
- (4) The Customer may, at any time after the Live Date, terminate this agreement by giving written notice to CycleStreets.
- (5) Any termination under this clause shall discharge the parties from any liability for further performance of this agreement and in particular CycleStreets will not be liable to return any sums already paid under this agreement.

9 Suspension of the Service

- (1) If CycleStreets suspects that the circumstances set out in clause 8(2)(a) exist, then it may without liability, but after informing the Customer (except where it is not reasonably practicable to inform the Customer in advance, provided that CycleStreets informs the Customer as soon as reasonably practicable thereafter), suspend availability of the Website or any of its constituent parts over the Internet or remove the Website or any of its constituent parts from the System pending clarification or investigation as to whether the remaining conditions in clause 8(2) are satisfied. Once any such clarification or investigation has been satisfactorily completed the availability of the Website must be reinstated and the Customer informed of the reinstatement.
- (2) If any sum (including statutory interest) due under this agreement remains unpaid more than 60 calendar days after falling due, then CycleStreets may suspend the operation of the Service for such a time as that sum remains unpaid.

10 Liability

Notwithstanding anything else contained in this agreement neither party shall be liable to the other party for loss of profits or contracts (other than, in the case of CycleStreets its net loss of future revenue (if any) from this agreement) loss of goodwill, or for any special indirect or consequential loss whether arising from negligence breach of contract or howsoever.

11 Entire agreement

This agreement supersedes all prior agreements arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

12 Force majeure

Notwithstanding anything else contained in this agreement, neither party shall be liable for any delay in performing its obligations under this agreement if such delay is caused by circumstances

beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party) provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned. Subject to the affected party promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay) the performance of the affected party's obligations shall be suspended during the period that the said circumstances persist and the affected party shall be granted an extension of time for performance equal to the period of the delay. Save where such delay is caused by the act or omission of the other party (in which event the rights remedies and liabilities of the parties shall be those conferred and imposed by the other terms of this agreement and by law) and any costs arising from such delay shall be borne by the party incurring the same.

13 Waiver of remedies

No forbearance delay or indulgence by either party in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right power or remedy herein conferred upon or reserved for either party is exclusive of any other right power or remedy available to that party and each such right power or remedy shall be cumulative.

14 Law

This agreement shall be governed by and construed in accordance with the laws of England and Wales.

15 Disputes

Any dispute which may arise between the parties concerning this agreement shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

16 Severability

Should the whole or any part of any provision of this agreement be found by a court to be illegal or unenforceable then the other provisions of this agreement and the remainder of the provision in question shall remain in full force and effect.

17 Third parties

The parties confirm their intent not to confer any rights on any third parties by virtue of this agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement.

18 General

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

Schedule 1

SERVICES

The Service

1. CycleStreets shall host a website that will:
 - (i) on request by a member of the public using the website, suggest bicycle-oriented routes between locations selected by the website user;
 - (ii) display those routes on a map, together with a stage-by-stage itinerary.
2. The Geographical Information, on which the routes and map are based, will be drawn from open third party sources. CycleStreets will not check or verify the accuracy or safety of either the routes or maps.
3. The routes and map will be restricted to those within the Geographical Area.

The Customer's obligations

4. The Customer will either:
 - (i) maintain a domain name with a DNS A record that is a CNAME for the website; or
 - (ii) maintain a web proxy that redirects a particular URL to the website.
5. The Customer must:
 - (i) indicate which method is to be used;
 - (ii) supply CycleStreets with the domain name or URL (as the case may be) to be used;
6. The website will only respond to HTTP requests directed at the appropriate URL or domain name. If the Customer wishes to change either domain name, URL or method used to direct traffic to the website, it must supply the requested changes to CycleStreets who will make best efforts to effect the changes within a reasonable time.

Styling

7. CycleStreets will incorporate style sheets, logos and other reasonable style requests ("styling information") into the website, provided that:
 - (i) the changes will not take effect until CycleStreets has had a reasonable time, after the delivery of the styling information, to incorporate them into the website;
 - (ii) such changes will be made on at most two occasions after the Start Date

Changes to the website

8. CycleStreets is under no obligation to make any changes to the website after the Snag Completion Date other than for the purposes of security, but CycleStreets may, at no extra cost and in its sole discretion, supply bug fixes and new functionality.
9. CycleStreets will not make any substantial changes to the functionality of the website without the prior agreement of the Customer.

Service Availability

10. Subject to force majeure or other circumstances beyond its control, CycleStreets will ensure that the service is available for 99.5% of the time.