

## Terms and Conditions For The Supply Of SEO Services

These pages, the Monthly SEO Plan and the Payment Schedule tell you the Terms and Conditions on which we supply any of the SEO services. Please read these Terms and Conditions carefully before ordering any Services from us. You should understand that by ordering any of our Services, you agree to be bound by these Terms and Conditions. You should print a copy of these Terms and Conditions for future reference. Please confirm that you accept these terms and conditions by signing the Monthly SEO Plan and returning it to: the address below ; or email to: [hello@bigtoewebdesign.co.uk](mailto:hello@bigtoewebdesign.co.uk).

Please understand that if you refuse to accept these Terms and Conditions, you will not be able to order any Services from us.

### Interpretation And Definitions 1.1

In this agreement the following terms shall have the respective meanings assigned to them:

**“Agreement”** means these Terms and Conditions, the Payment Schedule and the Monthly SEO Plan. In the event of any conflict between the terms of this Agreement, the details of the Monthly SEO Plan shall prevail, except for payment terms where the Payment Schedule shall prevail;

**“The Customer”** means the company its employees, agents, representatives and sub contractors, to whom the Service is provided as set out on the Monthly SEO Plan;

**“Commencement Date”** means the date of commencement of the Services as set out on the Monthly SEO Plan;

**“Fees”** means the amounts payable by the Customer for the Services provided by Big Toe Web Design as set out in the Monthly SEO Plan; **“Force Majeure”** means any act, event, omission or accident beyond reasonable control including but not limited to Acts of God, fire, lightning, explosion, flood, extreme weather conditions, outbreak of hostilities (whether war be declared or not), riot, civil disorder or commotion, acts of terrorism, industrial disputes or acts or defaults of any local or central Government or other competent authority;

**“Initial Term”** unless otherwise stated on the Monthly SEO Plan 6 months from the Commencement Date

**“Monthly SEO Plan”** means the customers agreed schedule for the provision of Services forming part of these Terms and Conditions;

**“Payment Schedule”** means the agreed schedule of payments that the customer shall make to Big Toe Web Design for the Services forming part of these Terms and Conditions;

**“The Service”** means the services to be provided by Ryan Glass, Trading as Big Toe Web Design as specified in the Monthly SEO Plan and further described on our website, [www.webdesignsedinburgh.co.uk](http://www.webdesignsedinburgh.co.uk);

1.2 The headings do not affect the interpretation of the Agreement.

1.3 Any reference to a party's employees includes its agents and sub-contractors.

## **2. Application Of The Terms**

2.1 These Terms and Conditions shall apply to and be incorporated in the Agreement.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Agreement shall be binding on Us unless in writing and signed by a duly authorised representative of Big Toe Web Design.

2.3 If the Customer wishes to vary any part of the Agreement, the request shall be sent in writing to Big Toe Web Design. Big Toe Web Design shall respond to the Customer within 5 days as to whether it is prepared to agree to the change and, if so, details of the cost of the change, any effect on any other part of the Agreement including any change in timescales. The Customer may accept such proposal within such time as Big Toe Web Design may specify or, if none, within 7 days, failing which it shall be deemed rejected. Pending acceptance or rejection Big Toe Web Design may continue to perform the Agreement without reference to the request.

## **3. Contractual Terms**

3.1 Any quotation is valid for a period of 7 days only, and Big Toe Web Design may withdraw it at any time by notice to the Customer. Any quotation is given on the basis that no contract shall come into existence until we dispatch an acknowledgement of order in accordance with clause 3.3.

3.2 Each order or acceptance of a quotation for Services by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that its order is complete and accurate.

3.3 No order for Services placed by the Customer shall be deemed to be accepted by us until a written acknowledgement (including email) is issued by us, or, if earlier, when Big Toe Web Design begins to provide the Services to the Customer.

3.4 No agreement may be cancelled by the Customer, except with the agreement in writing of Big Toe Web Design and provided that the Customer indemnifies Big Toe Web Design in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Big Toe Web Design as a result of the cancellation.

3.5 Big Toe Web Design's employees are not authorised to make any contractually binding representations concerning the Services. In entering into the Agreement, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which have not been confirmed in writing by a director of Big Toe Web Design.

## **4. Customer's Obligations**

4.1 The Customer will provide Big Toe Web Design with reasonable direct and remote access to its website, and shall provide such other reasonable assistance as Big Toe Web Design may request, including, but not limited to, providing source code and other statistical, diagnostic information and

other relevant information required to enable Big Toe Web Design to comply with its obligations under this Agreement.

4.2 The Customer shall comply with directions and advice from Big Toe Web Design within a reasonable period.

4.3 The Customer shall not interfere or disrupt the Service.

## **5. Implementation Of Service**

5.1. In consideration of the payment by the Customer of the Fees in accordance with clause 11 Big Toe Web Design shall provide the Services during the continuance of this Agreement.

5.2. Big Toe Web Design shall be permitted to subcontract or outsource any of the Services or obligations under this Agreement.

5.3. Big Toe Web Design will use reasonable efforts to provide Customers with the Services in accordance with the estimated timeline set out in the Monthly SEO Plan.

5.4. Where the Service being provided requires, Big Toe Web Design will liaise with the relevant web agency, hosting company or other third party in order to provide the Services. Big Toe Web Design shall not be liable for any act or omission by the relevant web agency, hosting company or other third party, if such act or omission results in Big Toe Web Design breaching its obligations under this Agreement.

5.5. Big Toe Web Design will not make changes to or update a Customer's website prior to written or verbal consent from the Customer, stating that Big Toe Web Design have the right to make the agreed changes and the Customer, as the website owner, agrees to and takes full responsibility for those changes being made.

## **6. Exclusions From Services**

6.1 Big Toe Web Design shall be under no obligation to provide Services in respect of:

- I. problems resulting from any modifications or customisation of the domain;
- II. links that are removed by third parties;
- III. any domains other than those specified on the Monthly SEO Plan;

6.2 The Services do not include:

- I. the cost of any third party software upgrades or web development which Big Toe Web Design advises are required;
- II. any website, hosting or other technical support;

## 7. Warranty

Big Toe Web Design warrants to the Customer that all Services supplied under this Agreement will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.

## 8. Contract Term

The Services shall commence on the Commencement Date and shall remain in force from year to year thereafter, unless and until terminated by either party giving 1 months notice expiring at any time after the end of the Initial Term or otherwise in accordance with any other clause of this Contract.

## 9. Payment

9.1 The Customer shall pay the Fees without set-off, deduction or delay, monthly in advance in the manner specified in the Payment Schedule. All prices are exclusive of VAT and any other relevant taxes. No Services shall be provided until payment has been received by Big Toe Web Design. Big

Toe Web Design shall be entitled at any time, and from time to time, to increase the Fees to accord with any change in Big Toe Web Design's standard scale of charges by giving to the Customer not less than [90] days' prior written notice.

9.2 If Big Toe Web Design provide any services not included within the Services at the request of the Customer then Big Toe Web Design shall charge for the same at its then current price and the Customer shall pay any invoice raised in respect of the same within 30 days.

9.3 Time for payment of Big Toe Web Design's invoices shall be of the essence of the Agreement.

9.4 If the Customer fails to make payment in full on the due date, the whole of the balance of the Fees then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Big Toe Web Design Big Toe Web Design may:

- I. appropriate any payment made by the Customer to any outstanding sum;
- II. charge interest on the amount outstanding from the due date to the date of receipt by Big Toe Web Design (whether or not after judgment), at the annual rate of 4% above the then current base lending rate of HSBC Bank plc, accruing daily and compounded quarterly; and
- III. suspend all further delivery of Services until payment has been received in full.

9.5 The Fees are not refundable, except where otherwise stated herein.

9.6 Cheques and direct debits returned unpaid by the Customer's bank and credit card payments returned unpaid will incur an administration charge which under all circumstances shall be paid by the Customer.

## **10. Termination Or Suspension Of Service**

10.1 Big Toe Web Design may, at its sole discretion, suspend the Services or terminate this Agreement if the Customer:

- I. fails to pay any sum due under this Agreement and such sum remains unpaid for 11 days after written notice from Big Toe Web Design that such sum has not been paid;
- II. ceases to carry on business or become insolvent, or have an administrator or receiver appointed or enter into liquidation or enter into any agreement with its creditors; or
- III. fails to fulfil any of its obligations under any part of this or any other agreement that it has with Big Toe Web Design; or
- IV. interferes with or impairs the Service, or Big Toe Web Design's ability to deliver the Services.

10.2 Termination of the Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

## **11. Dispute Resolution Procedure**

11.1 If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 7 days of a written request from one party to the other, speak promptly in good faith to resolve the dispute.

11.2 If the dispute is not resolved in accordance with condition 10.1, the dispute shall be referred to mediation and the mediator shall be appointed by a Swedish Mediation Network.

## **12. Data Protection Act**

12.1 If any Personal Data (as defined by the Data Protection Act 1698) is passed to Big Toe Web Design under this Agreement then the parties agree that the Customer is the Data Controller and that Big Toe Web Design is the Data Processor.

12.2 The Customer warrants that it complies with the Data Protection Act 1698

12.3 Big Toe Web Design shall:

- I. process the Personal Data only in accordance with instructions from Customer;
- II. process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- III. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or loss, destruction, damage, alteration or disclosure; and Big Toe Web Design.

IV. take reasonable steps to ensure the reliability and confidentiality of any of Big Toe Web Design's personnel who have access to the Personal Data.

### **13. Limitation Of Liability**

13.1 The following provisions set out the entire liability of Big Toe Web Design (including any liability for the acts or omissions of its employees) to the Customer in respect of any breach of the Agreement and any representation, statement or tortious act or omission (including negligence) arising out of or in connection with the Agreement.

13.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.

13.3 Nothing in these conditions excludes or limits the liability of Big Toe Web Design for death or personal injury caused by Big Toe Web Design's negligence or fraud or fraudulent misrepresentation. Subject to:

I. Big Toe Web Design shall not be liable for any loss of profits, loss of business, depletion of goodwill or similar losses or for any special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising; and

II. Big Toe Web Design's total liability 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 Agreement shall be limited to 170% of the total fees received by Big Toe Web Design in the calendar year in which the incident occurs.

13.4 The provisions of this Clause 12 shall continue to apply notwithstanding the termination or expiry of this Agreement.

13.5 Big Toe Web Design will not be liable for any links being removed by a third party.

### **14. Confidentiality**

14.1 Save as provided in this Agreement each party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one party to the other. Each party shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging its obligations under the Agreement and shall ensure that such employees are subject to corresponding obligations of confidentiality.

14.2 All materials, drawings, specifications and data supplied by Big Toe Web Design to the Customer shall at all times be and remain the exclusive property of Big Toe Web Design, but shall be held by the Customer in safe custody at its own risk until returned to Big Toe Web Design, and shall not be disposed of or used other than in accordance with Big Toe Web Design's written instructions or authorisation.

14.3 This condition shall survive termination of the Agreement, however caused.

## **15. Non-Solicitation**

15.1 Neither party shall, during the continuance of the Agreement, or within 6 months of its termination, whether on behalf of itself or a third party, solicit or seek to entice away any employee of the other. In the event of breach of this clause the party in default shall pay the other a sum equal to six months gross pay of the employee concerned being a pre-estimate of the cost of recruitment and training a replacement.

## **16. Force Majeure**

16.1 Big Toe Web Design shall not be liable to the Customer for any breach of its obligations under this the Agreement if such breach is due to or substantially contributed to a Force Majeure event.

16.2 If a Force Majeure event occurs, Big Toe Web Design shall inform the Customer as soon as possible and take all reasonable steps to mitigate the effects of the Force Majeure event and resume performance.

## **17. Promotional Materials**

17.1 The Customer hereby agrees that Big Toe Web Design may refer to the Customer, by company or trading name, and to the existence of this Agreement in any marketing or promotional materials.

17.2 To allow Big Toe Web Design to refer to the names above the Customer grants Big Toe Web Design a royalty free licence to use the Customers company name, trade name and logo as required.

## **18. Waiver**

A waiver of any right under the Contract is only effective if it is in writing and signed by or on behalf of the waiving party, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

## **19. Entire Agreement**

19.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

19.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy (other than for breach of contract) in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement.

19.3 In the event of any part of this Agreement being held inapplicable or unreasonable, the remainder of the Agreement shall remain in full force and any clause held inapplicable or unreasonable shall be enforced to the fullest extent possible.



## **20. Assignment**

20.1 The Customer shall not, without the prior written consent of Big Toe Web Design, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

20.2 Big Toe Web Design may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement.

## **21. Third Party Rights**

The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.