

Terms of Business

White Cobalt Ltd

From this point forth White Cobalt Limited, registered in England at Business Design Centre, 52 Upper Street, London, N1 0QH, company no: 07605160, is referred to as the “Supplier”. The receiver of services provided by the company is deemed as the “Client”.

Unless otherwise agreed in writing by the Supplier all services are supplied on the following terms and conditions to the exclusion of any terms and conditions stipulated by the buyer and any previous representations, warranties or communications not expressly incorporated herein.

The Supplier shall assume that the Client understands and accept these terms as an integral part of Conditions of Sale.

Definitions

The definitions and rules of interpretation in this clause apply in this agreement (unless the context requires otherwise).

Beta Launch Date: the date the Solution is first made available by the Supplier for use (or testing) by the Client.

Board: the board of directors of the Client (including any committee of the board duly appointed by it).

Business Opportunities: any opportunities which the Supplier becomes aware of during the Engagement which relate to the Business of the Client or which the Board reasonably considers might be of benefit to the Client.

Bug: code within the Solution that (any of the following):

- a. Results an unhandled exception or error message that prevents the operator from successfully completing the operation.
- b. Produces a result that is clearly different from the intended operation, which has been clearly stated in the Scope of Work. (e.g. pressing a ‘Save’ button and the data not being saved).

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

Change Request: any alteration, refinement, clarification or extension to Solution after the Scope of Work has been agreed.

Commencement Date: the date this agreement is provided to the Client, or the date the first invoice is raised by the Supplier to the Client, whichever is earliest.

Client Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client or its Clients and business contacts, and any equipment, keys, hardware or software provided for the Supplier's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Supplier on the computer systems or other electronic equipment of the Client.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, Clients, products, affairs and finances of the Client for the time being confidential to the Client and trade secrets including, without limitation, technical data, products, developments designs and know-how relating to the Business of the Client or any of its suppliers, Clients, agents, distributors, shareholders, management or business contacts, including information that the Supplier creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Engagement: the engagement of the Supplier by the Client on the terms of this agreement.

Intellectual Property Rights (IPR): means any and all copyright, rights in inventions, patents, know-how, source code, compiled code, software, apps, applications, trade secrets, trademarks and trade names, service marks, design rights, documents (including this one), rights in getup, database rights (including rights of extraction) and rights in data, semiconductor chip topography rights, mask works, the right to sue for passing off, utility models, domain names and all similar rights and, in each case whether registered or not; including any applications to protect or register such rights and including all renewals and extensions of such rights or applications; and whether vested, contingent or future; and wherever existing and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition (and "Intellectual Property" shall be construed accordingly).

Invention: any invention, idea, discovery, development, improvement or innovation made by the Supplier in connection with the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

Investigation: the process of analysing code and data within the Solution to establish the cause of a Bug.

Key Person: a person who was at any time during the period of 12 months immediately prior to the Termination Date engaged or employed as an employee, director, contractor (other than a professional adviser) or agent of the Client and who was both:

- a. a person with whom the Supplier personally dealt during their engagement by the Client; and
- b. employed or engaged in a senior capacity.

Out of Scope Work: any task undertaken which is not covered in the Scope of Work.

Prospective Clients: any person or company with whom or which at any time during the period of 12 months prior to the Termination Date the Supplier on behalf of the Client or any Group Company has been in negotiation or who or which has received a credentials or other presentation or a competitive pitch with which the Supplier was involved with a view to the provision of the Client's services to such person or company.

Scope of Work: a clear and precisely defined and documented set of requirements for the Solution.

Solution: the software which is created by the Supplier and provided to (or access provided) the Client.

Substitute: a substitute for the Supplier appointed under the terms of clause

Termination Date: the date of termination of this agreement, howsoever arising.

Work: all tasks undertaken by the Supplier in connection with the Scope of Work, or required to create the Solution, during the Engagement.

1. Term of Engagement

- 1.1 The Client shall engage the Supplier and the Supplier shall provide the Services on the terms of this agreement.
- 1.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated:
 - (a) as provided by the terms of this agreement.

2. Duties and Obligations

- 2.1 During the Engagement the Supplier shall;
 - (a) deliver the agreed Scope of Work with all due care, skill and ability and use their best endeavours to promote the interests of the Client;
- 2.2 If the Supplier is unable to deliver the Scope of Work or provide Services for any reason, they shall advise the Client of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 3 in respect of any period during which the Services are not provided.
- 2.3 Unless the Supplier has been specifically authorised to do so by the Client in writing:
 - (a) the Supplier shall not have any authority to incur any expenditure in the name of or for the account of the Client; and
 - (b) the Supplier shall not hold himself out as having authority to bind the Client.
- 2.4 The Supplier shall:
 - (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

3. Fees

- 3.1 If required, The Client shall pay the Supplier a fixed agreed fee for the Scope of Work carried out for the Client.
- 3.2 The Client shall pay the Supplier for any additional Services, Change Requests or other work undertaken that falls outside of the Scope of Work.
- 3.3 In consideration of the provision of the Services, the Client shall pay each invoice submitted by the Supplier upon receipt.

- 3.4 Should work be suspended or cancelled at the request of or delayed through the fault of the Client for a period of 30 days. The Supplier shall then be entitled to payment for work already carried out, regardless of the agreed payment schedule.
- 3.5 Invoices not paid within the agreed payment term will be subject to a late payment surcharge of 3% above base rate.
- 3.6 All works, goods and services remain the property of the Supplier invoices are settled in full.
- 3.7 All monies paid are non-transferable and non-refundable and no part thereof will be returned for orders or leases cancelled or otherwise prematurely terminated.
- 3.8 The Supplier reserves the right to suspend fulfilment of any order pending any dispute regarding payment.

4. Other Activities

Nothing in this agreement shall prevent the Supplier from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Supplier's obligations under this agreement;

5. Confidential Information and Client Property

- 5.1 The Supplier acknowledges that in the course of the Engagement that he will have access to Confidential Information. The Supplier has therefore agreed to accept the restrictions in this clause.
- 5.2 The Supplier Company shall not (except in the proper course of its or his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:
 - (a) any use or disclosure authorised by the Client or required by law;
 - (b) any information which is already in, or comes into, the public domain otherwise than through the Supplier's unauthorised disclosure.
- 5.3 At any stage during the Engagement, subject to all fees being paid, the Supplier will promptly on request return to the Client all and any Client Property in his possession.

6. Data Protection

- 6.1 The Supplier consents to the Client holding and processing data relating to them for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" (as defined in the Data Protection Act 1998) relating to the Individual.

7. Intellectual Property Rights

- 7.1 Unless specifically defined and agreed, the Solution is provided as a service by the Supplier on a subscription basis. The Supplier reserves all rights to Intellectual Property. For the avoidance of doubt all rights in any code, databases and other information held and stored in software and associated files belong to the Supplier.

- 7.2 Any unauthorised use of intellectual property will warrant a breach of international copyright laws and be legally actionable. The Supplier shall be reimbursed by the client in respect of any claims, costs and expenses arising out of any client infringement of copyright, design or any other proprietary or personal rights. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.
- 7.3 Unless otherwise agreed in writing all work will feature a discreet White Cobalt credit and link.

8. Status

- 8.1 The relationship of the Supplier Company (and the Individual) to the Client will be that of independent Contractor and nothing in this agreement shall render it (nor the Individual) an employee, worker, agent or partner of the Client and the Supplier Company shall not hold itself out as such and shall procure that the Individual shall not hold himself out as such.
- 8.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier Company shall be fully responsible for and shall indemnify the Client or any Group Company for and in respect of:
- a.) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the Individual in respect of the Services, where such recovery is not prohibited by law. The Supplier Company shall further indemnify the Client against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Client in connection with or in consequence of any such liability, deduction, contribution, assessment or claim other than where the latter arise out of the Client's negligence or wilful default;
 - b.) any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual or any Substitute against the Client arising out of or in connection with the provision of the Services.
- 8.3 The Client may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier Company.
- 8.4 The Supplier Company warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

9. Insurance and liability

- 9.1 The Supplier maintains Professional Indemnity Insurance with Hiscox up to £500,000.
- 9.2 Notwithstanding the provisions of clause 17, the Supplier accepts no liability for any losses suffered by the Client. For the avoidance of doubt, no liability will be accepted resulting from the unavailability of the service, delay in delivery or bugs in the solution.
- 9.3 The Client accepts full and sole responsibility for complying with all appropriate or relevant legislation or regulation. The Supplier makes no guarantees or warranties that any Solution is compliant with such regulation or legislation, and accepts no liability for any breach. For the avoidance of doubt, this includes, but is not limited to, the Data Protection Act 1998 and General Data Protection Regulation.

10. Termination

Notwithstanding the provisions of clause 1, the Client may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Supplier (other than in respect of amounts accrued before the Termination Date) if at any time:

- a. the Supplier commits any gross misconduct affecting the business of the Client;
- b. the Supplier commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Client;
- c. the Supplier is, in the reasonable opinion of the Board, negligent or incompetent in the performance of the Services or delivery of the Scope of Work;
- d. the Supplier is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;
- e. the Supplier commits any fraud or dishonesty or acts in any manner which in the opinion of the Client brings or is likely to bring the Supplier or the Client into disrepute or is materially adverse to the interests of the Client;
- f. the Supplier commits any offence under the Bribery Act 2010.

11. Obligations on Termination

On the Termination Date the Client shall pay any and all outstanding Fees to the Supplier. Subject to receipt of these fees the Supplier shall, if required:

- a. immediately deliver to the Client all Client Property which is in their possession or under their control;

12. Variation

No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

13. Third party rights

- 13.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 13.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

14. Price Variation

Prices are based on the Supplier's current costs of production and unless otherwise agreed are subject to amendment meet any rise or fall in such costs. Therefore, any quotation provided by the Supplier is only valid for a period of 60 days.

15. Preliminary Work

All work carried out whether experimentally or otherwise at the client's request will be charged for unless otherwise agreed.

Unless otherwise agreed in writing, all web and graphic design work will be provided as initial concepts, whereby one set of changes will be made to client requirements before providing revised visuals. One further set of client corrections will be made.

Any further alterations or design concepts will be considered outside the Scope of Work and subject to clause 18.

16. Copy

All copy must be provided by the client. Any additional work involved where copy is not supplied or is not clear and legible, suitable or compatible will be considered outside the Scope of Work and subject to clause 18.

17. Warranty

- 17.1 Unless otherwise specified in writing, the Solution is supplied with a 60-day warranty. The Supplier agrees to investigate and resolve any Bugs (as defined above) raised within 60 calendar days of the Beta Launch Date without further charge. Unless:
- a. The bug constitutes a change in the original design or Scope of Work.
 - b. The bug is not reported to the Supplier in a timely manner.
 - c. The bug exists in a part of the Solution that falls outside the Scope of Work.
 - d. After investigation, the bug was found to be caused by or linked to alterations made as a Change Request.
 - e. After investigation, the bug was found to be caused by or linked to incorrect or unintended use of the Solution by the Client.
 - f. After investigation, the bug was found to be caused by or linked to data provided by the Client or a 3rd party and therefore beyond the Supplier's control.
 - g. After investigation, it is found there is no bug.
- 17.2 Any time spent investigating under sections (d), (e), (f), or (g) of clause 17.1 will be considered outside the Scope of Work and subject to clause 18, regardless of whether any alterations are made to the Solution.
- 17.3 Any bugs reported more than 60 calendar days after the Beta Launch Date (where the launch date is day 1) will be considered outside the Scope of Work and subject to clause 18, regardless of cause.

18. Out of Scope Work

- 18.1 Any variation, refinement, amendment or clarification to a Scope of Work will be considered a Change Request and chargeable at current rates.
- 18.2 In the event of ambiguity in the Scope of Work, the Supplier retains the sole right to determining whether Works are Out of Scope.
- 18.3 The Supplier may, entirely at their own discretion and without prejudice, choose to waive or discount the Fees associated with any piece of Out of Scope Work.
- 18.4 The Client agrees to pay the Fees associated with Out of Scope Work (as per clause 3.2).
- 18.5 The Supplier will make reasonable endeavours to inform the Client when Works fall outside the agreed Scope of Work and will be subject to additional Fees before commencing, however this is not always practical or possible.
- 18.6 The Supplier will make reasonable endeavours to inform the Client of the anticipated Fees associated with Out of Scope Work, however this is not always practical or possible.

- 18.7 The Supplier will maintain records of the time spent on Out of Scope work and provide these records to the Client at the end of each calendar month.
- 18.8 The Fees associated with Out of Scope Work will be determined by the time taken and invoiced at the end of each calendar month in accordance with clause 30.

19. Exclusions to Scope of Work

The following services are not, and should not, be considered part of the Scope of Work, even if the Solution and/or Scope of Work requires them. If the Supplier is required to provide these services they will be subject to additional Fees:

- a. Email messages
- b. SMS (text) messages
- c. Hosting
- d. All hardware
- e. Data transfer
- f. DNS / Nameserver services
- g. Domain Names
- h. Backups, server maintenance or monitoring
- i. 3rd party software licenses
- j. Subscriptions to 3rd party services or software
- k. IP addresses
- l. Electronic Storage space

20. Packages and Services

- 20.1 Unless otherwise specified, service prices cover detailed benefits for one year only. Thereafter an on-going charge is levied per annum. Unless specifically agreed all services, including websites, web software and applications, however created, are provided as a service to the buyer on a subscription basis and subject to withdrawal.
- 20.2 Unless notified 30 days prior to renewal, the Supplier will renew services annually and invoice the Client accordingly.
- 20.3 Unless notified 30 days prior to renewal, the Supplier will renew any domain name registrations held on the Client's behalf, and invoice in correlation to current market considerations.

21. Client's Property

- 21.1 Client's property and all material supplied to the Supplier by or on behalf of the Client shall, while it is in the possession of the Supplier or in transit to and from the Client, be deemed to be at the Client's risk unless otherwise agreed and the Client should insure accordingly.
- 21.2 The Supplier shall be entitled to make a reasonable charge for storage of any Client's property left with Supplier before receipt of the order or after notification to the Client of completion of work.

22. Materials Supplied by the Client

Where materials are so supplied or specified the Supplier will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in, or in the unsuitability of, materials so supplied or specified.

23. Insolvency

If the Client ceases to pay their debts in the ordinary course of business or cannot pay their debts as they become due or being a company is deemed to be unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the Supplier without prejudice to other remedies shall:

- a. Have the right not to proceed with the contract or any other work for the Client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Client such charge to be an immediate due debt to them.
- b. In respect of all unpaid debts due from the Client have a general lien on all goods and property in their possession (whether worked or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner and at such price as the Supplier sees fit and to apply the proceeds towards such debts. For the avoidance of doubt "good and property" shall include any Intellectual Property Rights as defined at the top of this agreement.

24. Content and Illegal Matter

- 24.1 The Supplier shall not be deemed responsible for the content or use of the Solution by the Client, or any third party, and is indemnified by the Client in respect of any associated dispute.
- 24.2 The Supplier shall not be required to include or upload material which in its opinion is or may be of an illegal, offensive or libellous nature or an infringement of the proprietary or other rights of any third party.
- 24.3 The Supplier shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright patent design or any other proprietary or personal rights contained in any material created, uploaded, printed or featured for the Client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

25. Guarantee of Service

As a consequence of the service the accessibility and operability of Internet-based work cannot be guaranteed. The Supplier accepts no responsibility in the event the Client or other users are unable to access materials or the Solution placed on any server.

26. Force Majeure

The Supplier shall be under no liability if unable to carry out any provision of the agreement, for any reason beyond their control, including (without limiting to) act of God, legislation, fire, flood, drought, terrorism, failure of power supply or furtherance of a dispute or owing to an inability to produce materials required for the performance of the agreement. During the continuance of such a contingency the Client may by written notice to the Supplier elect to terminate the agreement and pay for work done and materials used but subject thereto shall otherwise accept completion when available.

27. Law

These conditions and all other express terms of the agreement shall be governed and construed in accordance with the laws of England.

28. SEO

Any Search Engine Optimisation work which is undertaken is done so on the basis of the service described and the Supplier offers no guarantee of any result or outcome, whether expressed or implied.

29. Conflict of Interest

The Supplier agrees to endeavour to make all parties aware of any potential conflict of interest should one arise, but accepts no liability in this regard.

30. Rates

Below is a list of the Supplier's current rates:

- 31.1 The Supplier reserves the right to alter these rates, provided:
 - a. The Client is notified in writing at least 30 days' beforehand
- 31.2 The rates listed are shown without VAT.
- 31.3 All rates (and invoices) are subject to VAT at the current rate.
- 31.4 1 day is defined as 7.5 hours (450 minutes)
- 31.5 The determination of which rate is applicable for any Work is solely at the discretion of the Supplier.

Consultancy (per day or any part thereof)	£1200
Mobile App Development (per day, ¼ day minimum)	£697
All other Development (per day, ¼ day minimum)	£650
Project Management (per hour or any part thereof)	£80
Anything else (per hour or any part thereof)	£80