

# STRATEGIC INTEGRATION LIMITED TRADING AS OPENBROLLY

Northport Studio, Elgin, IV30 1PU, United Kingdom.

## TERMS AND CONDITIONS OF TRADE AS AT 1 MAY 2017

### 1. Introduction and definitions

1. These terms and conditions ("Conditions") shall govern the agreement between Strategic Integration Limited ("us" or "we") and the individual or organisation applying for the provision of the Goods or Services ("you").
2. Our registered office and correspondence address is Northport Studio, 9A Lossie Wynd, Elgin IV30 1PU, United Kingdom.
3. You can contact us by email on [support@openbrolly.com](mailto:support@openbrolly.com) or telephone +44 (0)1309 638077.
4. We explain in the headings what each clause covers. These headings are for guidance only and are not intended to be legally binding.
5. These Conditions take precedence if inconsistent with other material issued by us.
6. The following have particular meanings in these Conditions: "Consulting Services" means the consulting, advisory and bespoke development services which we agree to provide to you; "Data" includes information, documents, text, software, music, sound, photography, messages, and other material of any kind in any form; "Goods" means the goods which we agree to sell to you; "Internet" means the global data network comprising interconnected networks to which we are connected, including cloud server capacity leased from Amazon Web Services; "Personal Data" means Data about any identified or identifiable living person; "Registry" means either Nominet UK Limited, CentralNIC Limited or Tucows Inc, or any other domain names registry that we choose to use from time to time; "Services" means the web-system and related services which we agree to provide to you; and "Website" means our web presence at openbrolly.com and other locations we advertise from time to time; "User Content" is information, data and files entered by you or users of the Service.

### 2. Changes to these Conditions

1. We reserve the right, on giving prior notice on the Website, to alter these Conditions at any time. The latest version will always be available on our Website and clients should check these.
2. Any renewal of the Services or Consulting Services will in any event be subject to our then current Conditions.

### 3. Security

You must:

- keep your username and password secure (and we may change these at any time for good reason and provide notification);
- take reasonable steps in respect of matters in your control to minimize any risk of

- security breaches in connection with the Services;
- notify us of any unauthorised access to your account which you believe may affect the overall security of our systems; and
- comply with our security checks.

#### **4. Services**

1. We will supply the Services with reasonable skill and care.
2. However, we do not guarantee:
  - that the Services will be uninterrupted, secure or error-free; or
  - that any Data generated, stored, transmitted or used via or in connection with the Services will be complete, accurate, secure, up to date, received or delivered correctly or at all. Where the service is unavailable due to failure in OpenBrolly systems for more than 24 hours we will agree with the client a pro rata deduction of their annual fee. Where the service is unavailable to the client due to the client's own connectivity or equipment or a failure in Internet communication services OpenBrolly will have no liability.
3. We may have to suspend the Services for repair, maintenance or improvement. If so, we will restore them as quickly as is reasonably possible. We will give at least 48 hours notice (via email, letter or on our @openbrolly Twitter account) of planned maintenance unless more urgent action is required to avoid / remedy a major security issue or system failure.

#### **5. Consulting Services**

1. We undertake to provide the Consulting Services using suitably qualified and experienced personnel. It is intended that the nominated consultants be used, where relevant, but we reserve the right to substitute other suitably qualified and experienced personnel and will notify the client of any such substitution.
2. You will, at your own cost, provide us with:
  - Reasonable office accommodation while working at the your premises with ancillary administrative facilities to enable us to perform our services efficiently;
  - Reasonable access to one suitably qualified member of the your staff nominated and authorised to act as day to day liaison with us and access to such additional members of the Client's staff as we may require to perform our services;
  - All material and information necessary for the timely performance of the Consulting Services as agreed between the parties.
3. Any agreed dates would be of the essence. Any agreed dates shall in any event be extended as appropriate to take account of any failure by you to comply with your responsibilities hereunder. When a fault has been recorded we will investigate and fix as quickly as possible.

#### **6. Your obligations**

1. You must comply with our reasonable instructions and requests concerning the

Consulting Services / Services.

2. You must provide us with up to date contact details of one named representative with whom we are authorised to deal (including email addresses) and promptly notify us of any changes. We rely on this information for various reasons including the transmission of renewal notices and other important information concerning the Services.
3. You are responsible for all persons who use your username and password to access the Services, whether authorised or not, unless acting on our behalf.
4. On termination of the Consulting Services / Services we may delete data stored with us. You should therefore ask in advance for a copy of any information you wish to save.

## **7 Restrictions**

1. You must refrain from transferring any illegal material or engage in unlawful activities via your use of the Services
2. You must refrain from sending menacing, offensive, defamatory, obscene, indecent or abusive messages whilst using the Services.
3. You must not use or permit the usage of the Services in a manner that is inconsistent with any and all applicable laws and regulations.
4. You must have in place reasonable systems and procedures available that prevent the upload in your Data, via your use of the Services, material that may contain a virus, worm, trojan or other malicious material.
5. You must not use the Services to send bulk unsolicited commercial emails.
6. You warrant that your use of the Services will not infringe any third party intellectual property or other rights.
7. You must not embark on any course of action, whether by use of your website or any other means, which may cause a disproportionate level of activity without providing us at least seven day's prior notice in writing. If you give notice or we otherwise become aware of such disproportionate use we may:
  - move your service to a dedicated server and charge our then current rate; or
  - terminate some or all of the Services forthwith.

## **8. User Content**

1. You bear sole responsibility for all User Content. We do not, and are not obliged to, check User Content. Our rights to remove and take other steps in relation to Data are without prejudice to this sub-clause.

## **9. Domain Name Registration**

1. You are bound by all present and future applicable terms and conditions of the relevant Registry.
2. You hereby grant us the authority to act as your agent in relation to the registration of

your domain name with a Registry.

3. Domain names that are not renewed may be cancelled.
4. With respect to renewal of domain names, we will:
  - use our reasonable endeavors to renew domain names which by the renewal date you have specifically asked us in writing to renew.
  - There is no charge for the transfer of your domain name to another Internet service provider. However you agree that we do not have to transfer your domain names to a new Internet service provider until you have paid all outstanding debts to us.

#### **10 Bespoke Software Warranty**

1. We warrant that Software shall perform substantially in accordance with the agreed Specification on the Specified Equipment, minor interruptions and errors excluded.
2. Any defects must be notified to us within 60 days of the software being supplied to the Client. Any defects notified after this period will be resolved at our normal commercial day rate.

#### **11 Data**

1. We may access, copy, preserve, disclose, remove, suspend or delete any Data:
  - if we are required to do so by applicable law or competent authority; or
  - for the purposes of registration of domain names with a Registry; or
  - if it is otherwise permitted under these Conditions; or
  - if such Data is prohibited under these Conditions.

#### **12 Personal Data**

1. We will process your Personal Data in compliance with the Data Protection Act and other relevant regulations.
2. You consent to such processing and confirm that, should you store Personal Data in any systems provided by us, you do so in compliance with the Data Protection Act and other relevant regulations and will continue to do so in future.

#### **13 Risk, Title and Ownership**

1. Risk shall pass to you on delivery of Goods, but the Goods shall remain our property until such time as full payment has been received.
2. You retain all rights and ownership over User Content.
3. Other than User Content and Goods, all Content and all software created for our Services, and all materials produced by us remains our property and all rights to such Content, software and materials is reserved. Our Services are offered on a limited, revocable, non-exclusive and non-sub-licensable basis.

#### **14 Limitation of Liability**

1. Nothing in these Conditions in any way excludes or restricts our liability for negligence causing death or personal injury or for fraudulent misrepresentation or for anything which may not legally be restricted. It does not affect consumers' statutory rights.
2. Our liability in contract, tort (including negligence) or otherwise in connection with these Conditions for any one event or a series of events is limited to the price of the Goods, or 125% of the payment we received from you for the Consulting Services / Services in the 12 months before the event(s) complained of.

3. In no event (including our own negligence), and even if we have been advised of the possibility of such losses, will we be liable for any:
  - economic loss (including, without limitation, loss of revenue, profit, contract, business or anticipated savings);
  - loss of goodwill or reputation;
  - special, indirect or consequential loss; or
  - damage to or loss of Data.
4. We have no liability for goods and services provided by third parties.
5. To the extent allowed by law, we exclude all conditions, terms, representations and warranties, whether imposed by statute or by law or otherwise, that are not expressly stated in these Conditions including, without limit, the implied warranties of satisfactory quality and fitness for a particular purpose. Consumers' statutory rights are unaffected.

### **15 Indemnity**

1. You will indemnify us against all claims, damages, liabilities, costs (including reasonable legal fees) directly or indirectly related to your registration of or use of your domain names, the use of the Goods, your use of the Consulting Services or Services or breach by you of these Conditions.

### **16 Payment**

1. You must pay the fees (together with VAT and any applicable taxes) specified by us when you order Goods or order or renew any Services according to our supplied schedule, or at the time of order / renewal.
2. Payment for Goods, Consulting Services or Services may be made:
  - by cheque or BACS; and
  - in advance or, if we agree to credit terms, within 30 days of our invoice.
3. Payment must be made without deduction or set-off.
4. All fees are non refundable unless otherwise stated.
5. All fees remain payable where we suspend the Consulting Services / Services in accordance with these Conditions.

### **17 Duration and termination**

1. All Services paid for either annually or monthly will be subject to initial contract periods of 12 months or 90 days respectively, and shall continue thereafter on a rolling monthly basis unless and until terminated in accordance with clause 17.2 and 17.3.
2. Subject to clause 17.1, either party may terminate this agreement (as regards some or all of the Services) at any time for any reason by giving to the other 30 days written notice.
3. We may terminate this agreement (as regards some or all of the Consulting Services / Services) or suspend some or all of the Consulting Services / Services immediately on written notice:

- If you breach any the terms and obligations under these Conditions and, if remediable, having received from us a written notice stating the intention to terminate these conditions if not remedied, fail to remedy the breach within 30 days;
  - If you are subject to a resolution for winding up or a petition for bankruptcy or liquidation or there is a proposal or you enter into any arrangement or composition with your or for your creditors or a receiver or liquidator or trustee in bankruptcy is appointed over you or any of your assets or any similar circumstances; or
  - if we are required to do so by a competent or regulatory authority.
4. On termination of this agreement or suspension of Services for any reason:
- we will immediately stop supplying, and will terminate access to, the relevant Services. This may involve irretrievable damage to or loss of Data generated, stored, transmitted or used via or in connection with the Services and / or we may destroy any such Data;
  - all licenses granted by us to you will terminate;
  - any fees due remain payable and, if already paid, will be refundable on a pro rata basis for the time remaining on the annual fee (if after the initial contract period);
  - your accrued rights and liabilities will be unaffected.

## **18 Confidentiality**

1. We both agree not to use for any purpose apart from this agreement or disclose any Confidential Data received from the other party. "Confidential Data" means Data identified as, or which clearly is, confidential.
2. This clause does not apply to Data which:
  - enters the public domain other than through breach of this clause;
  - is or becomes independently known to the receiving party free from any confidentiality restriction;
  - is required to be disclosed by applicable law or competent authority;
  - is reasonably disclosed to employees, suppliers, professional advisers or others for the proper performance of these Conditions, subject to a confidentiality agreement or contract being in place; or
  - DELETED
  - we are otherwise permitted to disclose in accordance with these Conditions.
3. We may announce that you are one of our clients.

## **19 Notices**

1. You should send any notices under these Conditions to the correspondence address or email address given at the top of these Conditions.
2. We shall send any notices in accordance with the most recent contact information which you have provided to us.
3. Notices may be sent by hand, recorded delivery, fax or email and shall be deemed to be received:
  - by hand - when delivered provided handed to a senior employee;

- recorded delivery - five days after posting;
- fax - when the sender receives an error-free transmission report; or
- email - on the day sent unless the contrary is proved.

## **20 General**

1. These Conditions represent the entire agreement of the parties relating to its subject matter. It supersedes all prior agreements and representations (unless fraudulent). We are not bound by, nor should you rely on, any oral representations or representations by any agent or employee of any third party you may use to apply for our Consulting Services / Services.
2. If any part of these Conditions is deemed void for any reason, the offending words shall be deemed deleted and the remainder shall continue in full force.
3. You may not assign these Conditions or subcontract or resell any of the Services without our prior written consent. OpenBrolly will inform the client with a sufficient prior notice period that it intends to assign prior to doing so, in case we would like not to deal with the assignee.
3. We shall not be liable for failure to perform or delay in performing any obligation under these Conditions if the failure or delay is caused by any circumstances beyond our reasonable control, including but not limited to failure of any communications, telecommunications or computer system.
4. No firm, person or company which is not a party to these Conditions shall have any right under the Contract (Rights of Third Parties) Act 1999 to enforce any provision of these Conditions.
5. The failure to exercise or delay in exercising a right or remedy under these Conditions shall not constitute a waiver of the right or remedy.
6. Nothing in these Conditions shall be construed as creating a partnership or joint venture of any kind between us.

## **21 Choice of law**

This agreement is governed by Scottish law and is subject to the exclusive jurisdiction of the courts of Scotland.