

# NERV TERMS OF BUSINESS

UPDATED 17.08.15

This Agreement is made between :

i. Nerv London Limited trading as nerv (hereinafter referred to as "we", "us" or "the Company") a private company limited by shares registered in England and Wales with registration number 07663499. Registered address: Nerv London Limited, Victoria House, 1 Gloucester Road, Cheltenham. GL51 8LN.

and

ii. Client Name: ..... (hereinafter referred to as "you" or "the Client")  
 Registration number: .....  
 Registered address: .....

## 1.0 DEFINITIONS

1.1 The following words and expressions, shall unless the context requires otherwise have the following meanings:

"Agreement"	Means this Agreement, and any other document incorporated by reference which is signed by the authorised representatives of the Parties and attached to it;
"Fees"	Means the fees payable for Services delivered by us to you under this Agreement;
"Force Majeure"	Means any event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under this Agreement including act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, national strikes, lock-outs or other industrial action, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services but excluding lock-outs or other industrial action affecting only the Party's own employees;
"Intellectual Property"	Means any and all present and future copyrights, registered designs, patents, trade marks, service marks, design rights (whether registered or unregistered), applications for any of the above, rights to extract or re-utilise data, know how, database rights, trade secrets, rights of confidence and all other similar rights recognised in any part of the world;
"Loss" or "Losses"	Means all losses, liabilities, damages, costs, expenses and charges, including such items arising out of or resulting from any actions, proceedings, claims, hearings, tribunals and demands and reasonable legal and professional fees;
"Services"	Means the services provided by us as set out in this Agreement and in particular as described on any Estimates;
"Schedule of Work"	The agreed requirements and timings for the execution of the Services which has been signed off between the Client and the Company (where applicable)

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## 2.0 OUR OBLIGATIONS

- 2.1 We agree to provide the Services using best quality materials, techniques and standards and applying the care, skill, diligence and ethical conduct required in accordance with best practice in the industry, profession or trade and in accordance with all applicable laws and regulations which for the avoidance of doubt includes the laws and regulations in the jurisdiction in which the Client is located.
- 2.2 We will comply with all your reasonable instructions which may be given from time to time in relation to the Services.
- 2.3 We will provide a Schedule of Work identifying the key deliverables and milestones of the Services including but not limited to start and end dates.
- 2.4 We will identify and obtain all licences, permits and approvals necessary to perform the Services.
- 2.5 We will remedy promptly and free of any charge any of the Services provided which are faulty, deficient, or unacceptable within a 30 day period after delivery.

## 3.0 YOUR OBLIGATIONS

- 3.1 Subject to Clause 5 below, you agree to pay the Fees for the Services in accordance with this Agreement.
- 3.2 Subject to Clause 2.3 above, by agreeing to the Schedule of Work, you agree to provide assets to us in a timely manner to enable us to complete the Services in accordance with agreed timescales. In the event of your failure to adhere to the Schedule of Work you agree to allow us to amend milestones and deadlines; you agree to allow us to charge 50% of the agreed Fees for scheduled days where no work could take place; and you agree to allow us to apply the Surcharges detailed in 4.3 to ensure original deadlines detailed in the Schedule of Work are met.

## 4.0 FEES

- 4.1 All fees presented will be net and exclusive of any value added taxes, goods and services tax, consumption tax, and other similar taxes whether local, national or federal (individually and collectively, "VAT").
- 4.2 Fees are calculated on the basis of an hourly, half-daily, or daily rate as indicated on our estimate.
- 4.3 For weekend or late night working we reserve the right to make a 50% surcharge on our hourly, half daily or daily rate as follows: £800/day, £450/half day, £120/hour.
- 4.4 Unless otherwise specified, fees include all standard telephone calls, emails and meetings held at our office to present work back to you.
- 4.5 Initial meetings are free but at our discretion subsequent meetings will be chargeable at £120 per hour. If you request us to attend meetings at your offices or other premises, in addition to charging £120 per hour we will also recharge travel, sustenance, and accommodation if required. Mileage will be charged at 45p per mile, whilst all other incurred expenses will be recharged at cost.

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## 4.0 FEES (CONTINUED)

- 4.6 Postage, courier and bike fees are all rechargeable at cost but please note that we do not accept responsibility for any loss or damage to goods in transit that are supplied by, posted or delivered to customers by ourselves or a third party, and we shall not be liable for late despatch or delivery howsoever caused.
- 4.7 Estimates remain valid for 30 days.

## 5.0 TERMS OF PAYMENT

- 5.1 Terms of payment are clearly marked on all invoices, but are 30 days unless otherwise specified.
- 5.2 At our discretion, you may be required to pay some or all of the fees for Services by way of a deposit before work will commence.
- 5.3 Deposit invoices are payable by return and unless otherwise agreed, specified work will not commence on a project until funds are cleared.
- 5.4 Unless otherwise agreed, the outstanding balance on a project is due as soon as the Service is completed to the agreed specification. On larger projects, by agreement, our fee may be charged incrementally as we complete individual elements, stages, or phases. As detailed in the Scope of Works, after 14 days of Client inactivity on a project (where you have failed to deliver feedback, approval, assets or content to the agreed project schedule) we reserve the right to invoice part or all of the remaining balance.
- 5.5 We accept payment by cheque, or bank transfer, but unless cleared funds are in our account, it is at our discretion whether we commence the Services or release artwork, assets, source code or printed goods.
- 5.6 In accordance with the Late Payment of Commercial Debts [Interest] Act 1998, as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002, we reserve the right to charge interest on overdue payments from the date upon which they become overdue. At our discretion interest will be calculated using the prevailing Bank of England Reference Rate and will not be less than 8% per annum. We also reserve the right to claim compensation for debt recovery costs and legal fees from you.

## 6.0 DISPUTES

- 6.1 Should you need to reject any work once it has been completed, this must be confirmed in writing within 7 days of the delivery date.
- 6.2 Invoice queries must be brought to the Company's attention in writing within 7 days of the invoice date.
- 6.3 The Parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the Parties who have authority to settle the same. If the matter is not resolved through negotiation, the dispute shall be referred to the Courts.

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## 7.0 AMENDMENTS & VARIATION TO CONTRACT

- 7.1 Amendments are expected and accounted for when we estimate a project, and these will be detailed in the project Estimate.
- 7.2 If you request tasks in addition to the contracted Services that are not detailed in any previous correspondence or on an Estimate, we reserve the right to charge a fee to complete these.
- 7.3 If in production the scope of a project changes beyond the contracted Services, we reserve the right to pause work, bring this to your attention and requote the project.
- 7.4 If a requote demonstrates an increase in the agreed fee, we reserve the right to request an additional payment to bring your account to 50% of the revised total project fee.
- 7.5 If a requote is required, you may choose to cancel any work that will exceed the initial estimated price, but you agree to pay in full for all work scheduled in to be completed to the end of the current design or development phase, as indicated in the Scope of Works.
- 7.6 This Agreement shall not be varied or amended otherwise than by agreement of the Parties and the issue of an amendment making reference to this Agreement signed on behalf of both Parties by their duly authorised representatives.

## 8.0 CONFIDENTIALITY

- 8.1 We will (and will procure that any personnel supplied to carry out the Services will):
  - 8.1.1 keep confidential all information which is disclosed (by whatever means, directly or indirectly) to us whether before or after this Agreement and which is either marked "confidential" or which is by its nature confidential, including without limitation, the names and details of your clients, the terms of this Agreement and any negotiations relating thereto, confidential information relating to you, and information relating to your or your Client's proposed business activities, financial terms (including, for the avoidance of doubt, the Fees), products, systems, operations, processes, plans, intentions, developments, trade secrets, know-how, customers and/or suppliers (the "Confidential Information");
  - 8.1.2 not use any Confidential Information for any purposes outside the scope of our obligations relating to the performance of the Services or to divulge such information to any other person except to our own employees, agents or sub-contractors, who need to know the same and only to the extent required in order to perform our obligations under this Agreement;
  - 8.1.3 not use any Confidential Information for any other project for any other client;
  - 8.1.4 impose obligations equivalent to those contained in this Clause 7 on all our employees and persons, firms and companies rendering services under this Agreement, such obligations to remain valid at all times even after termination of this Agreement;
- 8.2 Confidential Information shall not include information to the extent it:
  - 8.2.1 was lawfully in our possession prior to the commencement of negotiations leading to this Agreement;
  - 8.2.2 is already public knowledge or becomes so at a future date (otherwise than as a result of breach of this Agreement); or
  - 8.2.3 is required to be disclosed pursuant to a court order or other binding order from a regulatory authority with jurisdiction.
- 8.3 We will keep the existence, nature and content of this Agreement confidential, as well as all other commercial information relating to you or your Client in whatever form and shall not publish anything with regard to such matters without your prior written permission.

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## 9.0 LIABILITY, WARRANTY & SUPPORT

- 9.1 Without prejudice to any other exclusion, limitation or specific obligation contained within this Agreement, neither Party has liability to the other in contract (save to the extent anticipated in this Agreement), tort (including negligence or breach of statutory duty) or otherwise for any indirect or consequential losses or for any loss of anticipated savings, contract, revenue, turnover or bargain.
- 9.2 We accept no liability for the publication of incorrectly supplied information and liability in respect of an error on our part shall be limited to correction or replacement of the original artwork.
- 9.3 When you approve the completed Services you are confirming that; you are satisfied with what we've written, designed and typeset; that it's honest, true, legal and decent; that everything's included that should be; that names, contact details are accurate and so on. The email or signature of your nominated representative at this stage represents a confirmation that work is complete to your satisfaction and is an instruction to print, put a website live, record a commercial or produce whatever task is being processed.
- 9.4 All new web or software application development work that we provide is supplied with a standard 30-day warranty from the date it is put live. This allows for you to identify any omissions from your brief which may have been overlooked during the build process, or to identify any errors in the software which we may have missed in testing and for us to fix them should they exist. We can provide a continuation of this standard warranty through a separate support and maintenance agreement.
- 9.5 Our standard warranty does not allow for amendments or additions to the completed project and any such requests will be estimated and billed accordingly.

## 10.0 CONFLICT OF INTEREST

- 10.1 To the best of our knowledge there exists no actual or potential conflict between our business or financial interests and our proposed Services to you, but in the event of change in either our private interests or services, we will inform you regarding any possible conflict of interest which may arise.

## 11.0 COPYRIGHT & TRADEMARKS

- 11.1 You unconditionally guarantee that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to us are owned by you or that you have permission from the rightful owner to use each of these elements.
- 11.2 We unconditionally guarantees that any elements of programming code, text, graphics, photos, designs, trademarks, or other artwork utilised in any project and furnished to you are either owned by us or that we have permission from the rightful owner to use each of these elements.

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## 12.0 ASSIGNMENT OF COPYRIGHT

- 12.1 Once a project has been delivered by us and is fully paid for by you, we will assign the reproduction rights of the design. In accordance with the Copyright, Designs and Patents Act 1988 (c. 48), the rights to all creative design and art work remain with the individual designer, artist, photographer or illustrator. This means that if we have created something for you, including but not limited to a Corporate Identity, Strapline, Graphic Design Template, Website Template or Advertising Copy, unless you negotiate an "All Rights" buyout with us for extended usage, you may not use or reproduce any item for a purpose other than the one(s) stipulated in your original project brief. If you wish to use something we have created for another purpose or project, you must contact us to arrange the transfer of rights and the payment of any additional fees before proceeding.
- 12.2 For our own promotional and marketing needs, unless you specify otherwise, we reserve the right to use any work we create for you, including concepts, scamps, and mock-ups, as samples for our portfolio.
- 12.3 Copyright to any finished web or software application project produced by us on your behalf will be assigned to you once final payment and any additional charges incurred have been paid. Rights to photos, graphics, source code, work-up files, and computer programs are specifically not transferred, and remain the property of their respective owners.
- 12.4 We do not charge a license fee for continued use of any proprietary code we supply, and in the event of our working relationship ending, you retain the rights to all your static and dynamic page content and database. You also retain the right to request the complete working project in soft format should you wish to change hosting provider.
- 12.5 If you move your business away from us for any reason, we will seek to protect the intellectual property rights of any software solution we have developed or provided. In such circumstances you may not resell, reuse, or repurpose any software, application or solution developed or provided by us without the express consent of a Director of the Company and you must also seek our permission to enable another developer to work on our code.
- 12.6 If we find that our intellectual copyright has been infringed we will ask you to make the appropriate payment to us immediately and failing this, we will take legal action to recover these fees.
- 12.7 All domain names registered by us on your behalf are owned by you, unless otherwise stated. If we are the hosting provider, the domain name does have to be transferred to us for management. In this instance the domain name will still be owned by you.

## 13.0 NON-SOLICITATION

- 13.1 You shall not for the period of 6 months of the end of a project directly or indirectly employ or otherwise engage (or seek to employ or engage) any of our employees or other workers with whom you have had contact during the provision of the Services, save where such employee or worker merely responds to a general advertisement for a vacancy with the Client.
- 13.2 Where you are in breach of Clause 13.1, you agree to pay us liquidated damages equivalent to 30% of the most recent basic annual salary paid by us to the employee in question.

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## 14.0 TERMINATION

- 14.1 Either Party may by notice with immediate effect terminate this Agreement if the other Party materially breaches this Agreement either by way of a single breach or a number of breaches and fails to remedy such material breach within 20 days of receipt of notice from the first Party specifying the material breach and requiring the material breach to be remedied.
- 14.2 Either Party may terminate this Agreement for convenience by giving the other Party not less than one month's written notice.
- 14.3 Either Party may by notice with immediate effect terminate this Agreement if the other Party shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) or if the other ceases to trade.
- 14.4 We may terminate this Agreement by notice with immediate effect if you become unable to perform your obligations under this Agreement by reason of Force Majeure which extends beyond the period of 1 month.
- 14.5 You will have the right to terminate this Agreement by giving us notice with immediate effect on a breach of Clause 8 of this Agreement.
- 14.6 Any termination of this Agreement shall be without prejudice to all other accrued rights or obligations of either Party to the other. For the avoidance of doubt, any provision of this Agreement which expressly or by implication is to continue beyond termination of this Agreement shall not be affected by termination and shall survive termination of this Agreement.
- 14.7 On the termination of this Agreement we will pass to you all Confidential Information and other documents and materials reasonably requested by you (including copies) which were provided to us by you or on your behalf.

Signed approval of this document constitutes full compliance with the Terms and Conditions of business as described above.

Signed for and on behalf of  
nerv

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Name

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Date

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Signed for and on behalf of

-----

Name

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Date

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