

# ASPIRE DESIGN STUDIOS

## Website Design Agreement

between

**Aspire Design Studios Limited**

and

**Massachusetts Institute of Technology**

Website design agreement: **act.mit.edu**  
30th March 2011

THIS AGREEMENT is dated March 30th, 2011

## Parties

**Aspire Design Studios Limited** incorporated and registered in England and Wales with company number 6016010 whose registered office is at Adelaide Wharf, 21 Whiston Road, London E2 8EX (the “**Company**”).

**Massachusetts Institute of Technology**, whose registered address is at 77 Massachusetts Ave, Cambridge, MA 02139, United States of America (the “**Customer**”).

## Recitals

- (a) The Company provides web design and web hosting services.
- (b) It is proposed that the Company shall provide the Customer with these services on the terms of this agreement.

## Agreed terms

### 1. Definitions and interpretation

- 1.1 The definitions in the recitals of the agreement shall apply to this agreement.
- 1.2 The definitions and rules of interpretation in this clause apply in this Agreement.

“**Acceptance criteria**” has the meaning given to it in Clause 5.2;

“**Acceptance period**” means the period of 10 Business days beginning on the date of actual delivery of the Website to the Customer;

“**Affiliate**” means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

“**Agreement**” means this agreement and any amendments to it from time to time;

“**Business day**” means any week day, other than a bank or public holiday in England;

“**Business hours**” means between 09:00 and 17:30 GMT time on a Business day;

“**Charges**” means the amounts payable by the Customer to the Company under or in relation to this Agreement;

“**Confidential Information**” means:

- (a) any information supplied by one party to the other party (whether supplied in writing, orally or otherwise) marked as “confidential”, described as “confidential” or reasonably understood to be confidential;

- (b) the terms (but not the existence) of this Agreement;

“**Control**” means the legal power to control (directly or indirectly) the management of an entity (and “**Controlled**” will be construed accordingly);

“**Customer works**” means the works and materials provided to the Company by the Customer, or by any third party acting for or on behalf of the Customer, for incorporation into the Website;

“**Defect**” means a defect, error or bug having a material adverse effect on the appearance, operation or functionality for a period of at least 24 hours of the Website but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Customer, or an act or omission of one of the Customer’s employees, officers, agents or sub-contractors;
- (b) any power outage, power cut, maintenance carried out by the Hosting Company;
- (c) any Force Majeure event affecting the Hosting Company; or
- (d) an incompatibility between the Website and any other application, program or software (other than the Customer Works

and the Third Party Works);

(e) The website being hacked.

**"Delivery date"** means the date for delivery of the Website specified in the Delivery document;

**"Delivery document"** means the delivery document attached to this Agreement and dated 11th February 2011 between the Company and the Customer detailing the services the Company is to provide under this Agreement;

**"Effective Date"** means the date of execution of this Agreement;

**"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of, or problems with the internet, or a part of the internet, power failures, industrial disputes affecting any third party, hacking, tchanges to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**"Hosting Company"** means the company hosting the Website for the time being or at any given point in time;

**"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998;

**"Services"** has the meaning given to it in Clause 3.1;

**"Third Party Works"** means the works and materials comprised in the Website, the Intellectual Property Rights in which are owned in whole or part by a third party (excluding the Customer Works);

**"Term"** means the term of this Agreement;

**"Technologies"** means any code written by the Company for the Customer which relates to the execution or development of the Website;

**"Unlawful Content"** has the meaning given to it in Clause 7.1;

**"Website"** means any website to be developed by the Company for the Customer under this Agreement;

**"Website Credit Section"** means the portion of the Website dedicated to crediting the Company for their design, the location of which is to be agreed by the parties;

**"Website Design"** means the design of the website to be developed by the Company for the Customer under this Agreement; and

**"Year"** means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of the Effective Date.

1.3 In this Agreement, a reference to a statute or statutory provision includes a reference to:

- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
- (b) any subordinate legislation made under that statute or statutory provision.

1.4 The Clause headings do not affect the interpretation of this Agreement.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of this Agreement; it follows that a general concept or category utilised in this Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.

## 2. Term

This Agreement will come into force on the Effective Date and will continue in force until the acceptance of the Website by the Customer in accordance with Clause 5, upon which it will

terminate automatically, unless terminated earlier in accordance with Clause 15.

### 3. The Services

- 3.1 The Company will provide the Customer with the services set out in the Delivery Document (the “**Services**”).
- 3.2 The Company will use all reasonable endeavours to perform the Services in accordance with the timetable set out in the Delivery Document; however, the Company does not guarantee that that timetable will be met.
- 3.3 The Services may only be varied with the written consent of both the Company and the Customer.

### 4. Customer obligations

- 4.1 The Customer will provide the Company with:
- (a) such co-operation as is required by the Company (acting reasonably) to enable the performance by the Company of its obligations under this Agreement; and
  - (b) all information and documents required by the Company (acting reasonably) in connection with the provision of the Services.
- 4.2 The Customer will be responsible for procuring any third party co-operation reasonably required by the Company to enable the Company to fulfil its obligations under this Agreement.

### 5. Delivery and acceptance

- 5.1 The Company will use all reasonable endeavours to deliver the Website Design to the Customer for acceptance testing on or before the Delivery Date.
- 5.2 During the Acceptance Period, the Customer will carry out acceptance tests to determine:
- (a) whether the Website conforms in all material respects with the specification of the Website in the Delivery Document; and
  - (b) whether the Website has any Defects;
- (the “**Acceptance Criteria**”).

- 5.3 If the Website does not meet the Acceptance Criteria:

- (a) the Customer will send to the Company a written notice during the Acceptance Period setting out in detail the respect(s) in which the Website does not meet the Acceptance Criteria; and
- (b) the Company will have a further remedial period (of 20 Business Days) to modify the Website so that it meets the Intermediary Acceptance Criteria.

- 5.4 If the Website meets the Acceptance Criteria, the Customer will send to the Company a written notice During the Acceptance Period confirming acceptance of the Website.

- 5.5 The Website will be deemed to have been accepted by the Customer if:

- (a) the Customer does not give any notice to the Company under Clause 5.4 during the Acceptance Period; or
- (b) the Customer publishes the Website or uses the Website for any purpose other than development and/or testing.

### 6. Third Party Works

- 6.1 Third Party Works will be licensed to the Customer under the relevant licensor’s standard terms and conditions for online use, or on licence terms notified by the Company to the Customer.
- 6.2 No licence fees for Third Party Works are included in the Charges (unless the parties agree otherwise).

### 7. Unlawful Content

- 7.1 The Customer will ensure that the Customer Works do not infringe any applicable laws, regulations or third party rights (“**Unlawful Content**”).
- 7.2 The Customer will indemnify and will keep indemnified the Company against all damages, losses and expenses (including legal expenses) arising as a result of any claim that the Customer Works constitute Unlawful Content, or any legal proceedings relating to such a claim.

## 8. Charges and payment

- 8.1 The Company will issue an invoice to the Customer for outstanding balance once the Website has been published for purposes other than development and/or testing.
- 8.2 The Customer will pay the Company the full value of any invoice issued by the Company within 30 days of the invoice.
- 8.3 The Company reserves the right to invoice the Customer for an additional fee to be agreed between the parties (the “**Surplus Fee**”) in the event that the Services are modified in accordance with Clause 3.3.
- 8.4 The Customer will pay the Surplus Fee to the Company within 30 days of the date of issue of an invoice issued in accordance with Clause 8.3.
- 8.5 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Company to the Customer from time to time).
- 8.6 If the Customer does not pay any amount properly due to the Company under or in connection with this Agreement, the Company may:
  - (a) suspend the Services until the Company receives payment of the amount due; and
  - (b) either:
    - (i) charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment and will be compounded quarterly); or
    - (ii) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

## 9. VAT

- 9.1 An obligation to pay money includes an obligation to pay any value added

tax chargeable in respect of, and where appropriate to, that payment.

- 9.2 All sums made payable by the contract are exclusive of value added tax.

## 10. Intellectual Property Rights

- 10.1 Subject to full payment of the Charges, the Company hereby:
  - (a) assigns to the Customer all existing and future copyright and other Intellectual Property Rights in the Website (excluding the Customer Works and Third Party Works) arising on or after the Effective Date, including the right to bring proceedings for past infringement of such rights; and
  - (b) grants to the Customer a non-exclusive irrevocable perpetual worldwide licence of all copyright and other Intellectual Property Rights in the Website (excluding the Customer Works and Third Party Works) arising before the Effective Date for the purposes of:
    - (i) publishing and operating the Website;
    - (ii) backing-up the Website ; and
    - (iii) updating and adapting the Website ,
 and the Customer may sub-license the rights granted in this Clause 10.1(b) for the purposes set out herein.
- 10.2 The assignment of Intellectual Property Rights in Clause 10.1 (a) is for the full term of those rights, including all extensions, renewals, revivals and reversions.
- 10.3 Subject to full payment of the Charges, the Company undertakes not to design or create (or be involved in the design or creation of) any website, web application or web page the look and feel of which is:
  - (a) identical to the look and feel of the Website; or
  - (b) substantially similar to the look and feel of the Website; but

- (c) may utilise any of the Technologies so long as they do not conflict with Clause 10.3(a) or Clause 10.3(b).

10.4 Without prejudice to Clause 10.5, the Company waives (and will ensure that its employees and subcontractors waive) any moral rights they may have in the Website arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.

10.5 The Company may include the statement "Website by Aspire Design Studios" or some other statement to that effect as agreed between the parties (the "**Accreditation**") together with a link to the Company's website on the Website Credit Section of the Website in a position and in a form to be agreed by the parties. The Customer will retain any such credit and link in any adapted version of the Website, and the Customer will (and will only) remove any such credit and link from the Website at the Company's request in accordance with Clause 10.6.

10.6 In the event the Company desires the removal of the Accreditation from the Website:

- (a) the Company will send to the Customer a written notice; and
- (b) the Customer will have 2 Business Days from the date of the receipt of the notice to remove the Accreditation.

## 11. Warranties

11.1 The Customer warrants to the Company that it has the legal right and authority to enter into and perform its obligations under this Agreement.

11.2 The Company warrants to the Customer:

- (a) that it has the legal right and authority to enter into and perform its obligations under this Agreement;
- (b) that it will perform its obligations under this Agreement with reasonable care and skill;

- (c) that the use of the Website (excluding the Customer Works) by the Customer in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights of any third party; and

- (d) that the Website will continue to operate without any Defects for a period of 6 months from the date of acceptance of the Website (and if the Website does not so operate, the Company will, for no additional charge, carry out any work necessary in order to ensure that the Website operates without any Defects during this period).

11.3 The Customer acknowledges that the Company has designed the Website to work with the web browser technology specified in the Delivery Document, and the Company does not warrant that the Website will work with any other web browser technology.

11.4 The Customer further acknowledges that the Company does not purport to provide any legal advice under this Agreement or in relation to the Website and the Company does not warrant that the Website will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

11.5 All of the parties' liabilities and obligations in respect of the subject matter of this Agreement are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

## 12. Limitations and exclusions of liability

12.1 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or

- (d) exclude any liability of a party that may not be excluded under applicable law.

12.2 The limitations and exclusions of liability set out in this Clause 12;

- (a) are subject to Clause 12.1;

- (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and

- (c) will not limit or exclude the liability of the parties under the express indemnities set out in the Agreement.

12.3 The Company will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.

12.4 The Company will not be liable for any loss of business, contracts or commercial opportunities.

12.5 The Company will not be liable for any loss of or damage to goodwill or reputation.

12.6 The Company will not be liable in respect of any loss or corruption of any data, database or software.

12.7 The Company will not be liable in respect of any special, indirect or consequential loss or damage.

12.8 Neither party will be liable for any losses arising out of a Force Majeure Event.

12.9 The Company's liability in relation to any event or series of related events will not exceed the total amount paid by the Customer to the Company under the invoice immediately preceding the event or events giving rise to the claim.

12.10 The Company's aggregate liability under the Agreement and any collateral contracts will not exceed the total amount paid by the Customer to the Company under the Agreement.

### 13. Data protection

13.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under this Agreement.

13.2 The Company warrants that:

- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

### 14. Confidentiality and publicity

14.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 13 (For the purposes of this Clause 13, the terms of this Agreement constitute the Confidential Information of each party.)

14.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

14.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.

14.4 These obligations of confidentiality will not apply to Confidential Information that:

- (a) has been published or is known to the public (other than as a result of a breach of this Agreement);
- (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by

the other party; or

(c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body or a stock exchange.

14.5 Neither party will make any public disclosure relating to the subject matter of this Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party, not to be unreasonably withheld or delayed.

## 15. Termination

15.1 Either party may terminate this Agreement at any time by giving at least 30 days' written notice to the other party.

15.2 Either party may terminate this Agreement immediately by giving written notice to the other party if the other party:

(a) commits any material breach of any term of this Agreement, and:

(i) the breach is not remediable; or

(ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

(b) persistently breaches the terms of this Agreement (irrespective of whether such breaches collectively constitute a material breach).

15.3 Either party may terminate this Agreement immediately by giving written notice to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement);

## 16. Effects of termination

16.1 Upon termination all the provisions of this Agreement will cease to have effect, save that the following provisions of this Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7, 8.6, 6, 9, 10, 11, 12, 14, and 17.3 to 17.13.

16.2 Termination of this Agreement will not affect either party's accrued rights (including the Company's accrued rights to invoice for and to be paid the Charges) as at the date of termination.

16.3 If this Agreement is terminated by the Customer under Clause 15.2 or 15.3 (but not in any other case):

(a) the Company will promptly provide to the Customer an electronic copy of the Website;

(b) the Company will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Website to the Customer or another service provider, subject to payment of the Company's reasonable expenses; and

(c) the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any Services which were to be performed after the date



of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).

16.4 If this Agreement is terminated by the Customer under Clause 14.1:

- (a) the Company will be entitled to invoice the Customer for any work completed in execution of the Agreement but not previously invoiced for at a daily rate of £480.00; and
- (b) the Customer will pay the value of the invoice to the Company within 30 days of its date of issue.

16.5 Save as provided in Clause 16.3(c), the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

## 17. General

17.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered personally or sent by first class post, for the attention of the relevant person, and to the relevant address given below (or as notified by one party to the other in accordance with this Clause).

### The Company:

Aspire Design Studios Limited, Adelaide Wharf, 21 Whiston Road, London, E2 8EX.

### The Customer:

Massachusetts Institute of Technology M.I.T. ACT Program, 400 Main Street, E15-212, Cambridge, MA 0214217.2

A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business hours, when Business hours next begin after the relevant time set out below):

- (a) where the notice is delivered personally, at the time of delivery;

(b) where the notice is sent by first class post, 48 hours after posting, unless the notice is posted within the Public Holiday seasons (as defined by Royal Mail), wherein it will be deemed received after 240 hours.

17.3 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.

17.4 If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

17.5 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

17.6 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

17.7 Each party may freely assign its rights and obligations under this Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in this Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in this Agreement or any rights or obligations under this Agreement.

17.8 The Company may subcontract any of its obligations under this Agreement to any third party, subject to obtaining the Customer prior written consent (not to be unreasonably withheld or delayed).

17.9 Neither party will, without the other party's prior written consent, either during the term of this Agreement or within 6 months after the date of effective termination of this

Agreement, engage, employ or otherwise solicit for employment any employee or contractor of the other party who has been involved in the performance of this Agreement.

17.10 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under this Agreement.

17.11 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

## 18. Severance

18.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18.3 This Agreement constitutes the entire agreement and understanding of the parties in relation to the subject matter of this Agreement, and supersedes all previous agreements, arrangements and understandings between the parties

relating to the subject matter of this Agreement. Subject to Clause 11.1, each party acknowledges that no representations or promises not expressly contained in this Agreement have been made by or on behalf of the other party.

18.4 This Agreement will be governed by and construed in accordance with the laws of England and Wales and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## 19. Entire Agreement

19.1 This Agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

19.2 Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty ("**Representation**") of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents.

19.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

19.4 Nothing in this clause shall limit or exclude any liability for fraud.

This Agreement has been entered into on the 30th March, 2011.

**Signed by Ed Allen duly authorised for and on behalf of the Company**

..... **Director**

**Signed by Ute Meta Bauer duly authorised for and on behalf of MIT Program in Art, Culture and Technology**

..... **Associate Professor**