

Development work shall only commence on receipt of a full deposit. (Unless other arrangements have been made with Management)

On acceptance of any quotes, the authorised signatory shall have a period of 7 days in which to provide fMMedia with all information required for any development. If the client has still not submitted all the required contents within 14 days after signing the cost estimate or quotation (and not informed fMMedia via email or fax of any delays), an additional continuation fee of 15% of the total agreement price will be assessed for each month until the project is completed/published or the client cancels the web project in writing.

Additional requirements, modifications and additions to any design or development project that was not originally quoted for will be charged for separately as out of scope work (Scope Creep). If, on completion of any development work, the authorised signatory is dissatisfied with the work, a period of 5 days is provided during which time changes will be made at no additional cost on condition these changes are within the original brief and scope of work.

The quoted fees may change depending on the final specifications and scope of work.

There is an hourly rate of R550.00 p/h for any html5 and xhtml development.

There is an hourly rate of R650.00 p/h for database, programming, flash & graphic design.

A maintenance rate of R450.00 p/h is levied for updates to static html sites and CMS facilities

Consulting for projects, briefs, training and general meetings are levied at R650.00 per person per hour and an additional callout rate of R350.00 per callout

Please note:

- Quotations and cost estimates are valid for 14 days and are subject to final written technical brief supplied by the client. FMMedia can produce this written brief for the client at our hourly rates or as per quotation. This technical and briefing document must detail every aspect of the project in order for fMMedia to complete the development and quotation accurately.
- All contracts and application forms are to be completed and supplied, prior to commencement of work.
- All content (Textual and Image) are to be supplied, prior to commencement of work.
- There is a 50% Upfront Deposit Due on all work. Projects exceeding 1 month in development will have a structured milestone payment method.
- A service level agreement can be included for all monthly maintenance and related work.
- SMS, MMS and Bulk Mail Fees are charged separately and must be pre-purchased as and when required or as per quotation and are non-refundable
- All Prices exclude V.A.T. unless specified.
- fMMedia reserves the right to update or change these terms of service at any time and for any reason without notice.

Web/Mobile site Hosting, Server Hosting and Email Hosting

- Monthly web/mobile site, server and Email hosting fees are payable in advance via debit order or pre-arranged payment method.
- Web/Mobi site, servers and Email Hosting is on a month to month contract.
- One calendar months' notice is required if your wish to terminate your contract and services.

Domain Registration

- Registration fees are payable in advance in order to register the domain.
- One calendar months' notice is required if your wish to terminate your domain name or move your domain to another service provider. Your account with fMMedia must be up to date without arrears before your domain name will be released to a new host.

Refunds

Refunds are not normally offered once the initial project, code and designs have been created and supplied to the client, but refunds for incomplete work will be considered at the discretion of the management. Should a Client receive such refund, they acknowledge that they will have no right (express or implied) to use any response/samples or other work product, content, or media, nor any ownership interest in or to the same.

If for any reason any of FMMedia Services are terminated after start of the project, a minimum of 15% will be charged on the overall service quoted depending on time spent on the project and percentage of completion of the project which will be calculated from the technical and briefing documents.

The quotation excludes scanning, photography, copywriting, editing, translations, courier fees and any author's corrections incurred after receipt of layouts and proofs.

While FMMedia makes every effort to ensure the accuracy and correctness of all its material (design, final artwork and reproduction material) as well as print and technical specifications, the ultimate responsibility of checking, approving and accepting the accuracy and correctness of this material rests on the client who will have no recourse to Free Minded in the event of any discrepancies and/or errors in the aforementioned material, print and technical specifications.

We sincerely hope our quotation will meet with your requirements and look forward to receiving further instructions.

FM Media (PTY) Ltd
Registration No. 2012/108842/07

PROJECT DEVELOPMENT AGREEMENT**ENTERED INTO BY AND BETWEEN:****FMEDIA (PTY) LTD, Registration number: 2012/108842/07****Trading as****FMedia of the one part****(hereafter referred to as "FMedia") AND****name of client as entered on the quotation attached to this document of the other part (hereafter referred to as the "CLIENT")****WHEREAS: -**

- A. The CLIENT in terms of this Agreement instructs FMedia to develop (or alternatively improve its existing web or mobi site) maintain and or host its web or mobi site as per quotation.
- B. FMedia, subject to the terms and conditions as set out herein below has accepted the instructions of the CLIENT-

NOW THEREFORE THE CLIENT AND FMEDIA HEREBY AGREE TO THE FOLLOWING: -

By placing an order or receipt of monies to FMedia, you confirm that you are in agreement with and bound by the terms and conditions below.

Definitions:

The Client: The company or individual requesting the services of FMedia.

FMedia: Primary developer, designer, service provider, site owner & employees or affiliates.

General

FMedia will carry out work only where an agreement is provided either by Email, telephone, mail or fax. FMedia will carry out work only for clients who are 18 years of age or above. An 'order' is deemed to be a written or verbal contract between FMedia and the client; this includes telephone and Email agreements.

Web site and Mobile APP Design and Development

Whilst every endeavour will be made to ensure that the website and any scripts or programs are free of errors, FMedia cannot accept responsibility for any losses incurred due to malfunction, from the website or any part of it.

The website/mobile APP, graphics and any programming code remain the property of FMedia until all outstanding accounts are paid in full.

All intellectual property including any scripts, cgi applications, php scripts, or software (unless specifically agreed) written by FMedia remain the copyright of FMedia and may only be commercially reproduced or resold with the permission of FMedia.

FMedia cannot take responsibility for any copyright infringements caused by materials submitted by the client. We reserve the right to refuse any material of a copyrighted nature unless adequate proof is given of permission to use such material. The client unconditionally guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to FMedia for inclusion in the web/mobi design project are owned by the client, or that the client has permission from the rightful owner to use each of these elements, and will hold harmless, protect and defend FMedia and its subcontractors from any claim or suit arising from the use of such elements furnished by the client.

Any additions to the brief will be carried out at the discretion of FMedia and where no charge is made by FMedia for such additions, FMedia accept no responsibility to ensure such additions

are error free and reserve the right to charge an according amount for any correction to these or further additions.

The client agrees to make available as soon as is reasonably possible and usually within 14 (fourteen) days to FMedia all materials required to complete the site to the agreed standard and within the set deadline.

FMedia will not be responsible for cross browser development or testing unless specified in writing by the client. FMedia uses international guidelines for development and tests only in **Mozilla Fire Fox, Google Chrome and Internet Explorer using their current versions and one version behind**. This may change from time to time depending on industry standards and popular browser usage data.

FMedia will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines. If no feedback is supplied to FMedia on notification that the project is completed within 14 days, the final invoice will be sent to the client for payment and the project will be deemed to be completed successfully.

FMedia will not be liable or become involved in any disputes between the site owner and their clients and cannot be held responsible for any wrongdoing on the part of a site owner.

FMedia will not be liable for any costs incurred, compensation or loss of earnings due to the work carried out on behalf of the client or any of the clients appointed agents. FMedia will not be liable for any costs incurred, compensation or loss of earnings due to the unavailability of the site, its servers, software or any material provided by its agents.

Once a website/mobi site has been designed and completed the final balance of payment is then due in accordance with our payment terms. A signoff form will be provided at the end of the project and the project will only be made live on completion of this form together with the final payment being received. There are no exceptions to this, i.e If the client decides they no longer want the site, as they have commissioned the work and paid a deposit they are still obliged to pay for the work that has been done. Non payment will result in legal action being taken if necessary.

This agreement does not allow for web/mobi site maintenance to pages. A separate service level agreement is available at discounted rates for regular maintenance of web and mobi sites.

Graphic Design (Custom Design)**Initial Concept Delivery**

FMedia will begin the design development process upon receiving the initial deposit payment. The client will be notified by e-mail or telephone upon payment confirmation, thus assigning a designer and confirming the immediate start of the project. FMedia will produce your initial concepts within 1-5 business days following the receipt of your payment and brief.

Revision cycles

Revision cycles generally consist of 2-3 additional compositions that incorporate changes requested by the client in the Revision Brief. The purpose of the revision process is to create responses that move forward in a specific direction as determined by the client. The client may request significant changes in the 1st and 2nd cycles, and the Responses might be quite different in nature from the original composition chosen. By the 3rd revision request, the client's requests shall be modifications of the current composition only. Revision requests that depart from the current composition will be honoured and completed in the same timely manner; however, FMedia reserves the right to charge R650.00 per hour for each such Revision. No revision work, which requires payment, will be started without authorization from Client.

Database, Application and E-Commerce Development

FMMedia cannot take responsibility for any losses incurred by the use of any software created or modified for the client. Whilst every care has been taken to ensure products are problem free and accurate, the ultimate responsibility lies with the client in ensuring that all software is functioning correctly before use.

All intellectual property including any scripts, cgi applications or software (unless specifically agreed) written by FMMedia remain the copyright of FMMedia and may only be commercially reproduced or resold with the permission of FMMedia.

Where applications or sites are developed on servers not recommended by FMMedia, the client is expected to provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application to be correctly developed. Where large applications are to be developed, it is the client's responsibility to provide a suitable testing environment which is identical to the final production environment.

The client is expected to test fully any application or programming relating to a site developed by FMMedia before being made generally available for use. Where "bugs", errors or other issues are found after the site is live, FMMedia will endeavour (but is not obliged to) to correct these issues to meet the standards of function outlined in the brief.

Bulk Email, MMS, USSD and SMS services

- **Storage:** FMMedia assumes no responsibility for the deletion or failure to store Client information.
- **Late Delivery/ Failure to Deliver:** Email/MMS/SMS messages sent by the Client may not be delivered or delivered late due to amongst other reasons: FMMedia's third party dependencies and technical problems experienced by FMMedia and/or its partners, affiliates, agents, suppliers and networks. FMMedia assumes no responsibility for any losses suffered by the Client in relation to non-delivery of Client Email/MMS/SMS messages and/or the late delivery of the Client's Email/MMS/SMS messages when using the Mail/MMS/SMS Service.
- **Mailing List formatting:** FMMedia assumes no responsibility for ensuring correct formatting or validation of the Client's mailing list.
- **General:** FMMedia, its employees, suppliers, internet service providers, partners, affiliates and agents shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from use of the Mail/MMS/SMS Service and the internet generally, and/or any other reason not directly related to FMMedia's gross negligence and the Client expressly acknowledges and agrees that use of the Service is at its own risk. Mail/SMS Service is provided "as is" and "as available" without any warranties or conditions whatsoever, express or implied.
- **FMMedia Guarantees:** FMMedia makes no guarantees as to the continuous availability of the Mail/SMS Service or any specific feature(s) of the Service.
- **FMMedia Warranties:** Save to the extent expressly provided for herein, FMMedia makes no warranties in relation to the continuous availability of the Mail/SMS Service, any specific feature of the Mail/SMS Service, the protection and privacy or confidentiality of Client data and back up or storage of Client data.
- **Client Duties:**
 - The Client assumes responsibility for ensuring that the contact list used by the Client is formatted correctly. In this regard but without limitation, the Client acknowledges that: where the list must be a text file or CSV file, any other file (i.e. .DOC, .EXE, .XLS etc.) will generate errors or result in corrupted messages being sent or no message being sent at all.
 - The Client assumes responsibility for all tasks and costs related to obtaining and maintaining all computer hardware, software and communications equipment needed

to access the Mail/MMS/SMS Service, and for payment of all internet access charges including without limitation ISP and

telecommunications costs required for use of the Mail/MMS/SMS Service.

Client Account, Password, and Security:

To use the Website/Mobile APP/Mail/MMS/SMS Service, the Client must complete the registration process by providing FMMedia with current, complete and accurate information as requested. The Client will be provided with a username and password for accessing the Website/Mobile APP/Mail/MMS/SMS Service. The Client is entirely responsible for maintaining confidentiality with regard to its password and account information. Furthermore, the Client is entirely responsible for any and all activities that occur under its account. The Client agrees to notify FMMedia immediately of any unauthorized use of its account or any actual or suspected breach of security.

Client Privacy:

FMMedia will not intentionally disclose Client's private and/or personal data to unauthorised parties without the Client's permission unless FMMedia has a good faith belief that such action is necessary to: (1) conform to legal requirements or comply with legal process;(2) protect and defend the rights or property of FMMedia; (3) enforce this Service Agreement or protect FMMedia's business or reputation; (4) respond to request for identification in connection with claim of copyright or trademark infringement by the Client, or a claim by a third party that the Client is using the Website/Mobile APP/Mail/MMS/SMS Service in connection with an infringing, illegal or improper activity; or (5) act to protect the interests of the Client or others. The Client agrees that FMMedia may access its account, including its contents, as stated above or to respond to service or technical issues.

Client Code of Conduct:

Any unauthorized commercial use by the Client of the Website/Mobile APP /Mail/MMS/SMS Service, is expressly prohibited. The Client agrees to abide by all applicable local, national and international laws and regulations and is solely responsible for all acts or omissions that occur under its account or password, including the content of any transmissions through the Website/Mobile APP/Mail/MMS/SMS Service. By way of example, and not as a limitation, the Client agrees not to:

- Use the Service in violation of the ECT Act and WASPA in relation to unsolicited commercial communications;
- Unlawfully collect and process personal information, including Email/MMS/SMS addresses, without the relevant Email/MMS/SMS addressee's consent;
- Safeguard against prohibited data privacy practices such as: use of purchased databases or databases where the Client cannot readily prove that the addressee's consent to receive Email/MMS/SMS communications from the Client was obtained.
- Create a false identity or otherwise attempt to mislead others as to the identity of the sender or the origin of the Email/MMS/SMS;
- Transmit through the Mail/MMS/SMS Service, associate with the Mail/SMS Service or publishing with the Mail/SMS Service unlawful, harassing, libellous, defamatory, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable data;
- Transmit any data that may infringe the intellectual property rights or other rights of third parties, including trademark, copyright or right of publicity;
- Transmit any data that contains viruses, Trojan horses, worms and other malicious programs;
- Gain or attempt to gain unauthorized access to the Mail/SMS Service, other accounts, computer systems or networks connected to the Mail/MMS/SMS Service, through password mining or any other means;
- Engage in any other activity that could subject FMMedia to criminal liability, civil penalty or judgment.

Interception of Communications:

Subject to the provisions of the RIC Act, the Client agrees to FMMedia's right to intercept, block, filter read, delete, disclose and use all communications sent or posted by the Client to the FMMedia Mail/MMS/SMS service and to FMMedia employees and agents. The Client agrees and acknowledges that the consent provided by the Client above satisfies the "writing" requirement as detailed in the ECT Act and the RIC Act.

Electronic Commerce Laws.

The client agrees that the client is solely responsible for complying with such laws, taxes and tariffs, and will hold harmless, protect, and defend FMMedia and its subcontractors from any claim, suit, penalty, tax or tariff arising from the client's exercise of Internet electronic commerce.

Website / Mobile APP Hosting

We offer a complete range of shared and server hosting services to all type of business requirements by renting servers and buying server space and bandwidth from an ISP that we have been using since 2003. They have great customer and technical service as well as an impressive 99.9% uptime history. Hosting services may require a separate contract. The client will be solely responsible for all hosting service charges.

Training and Manuals for Projects

Training clients on using their content management systems or any custom solutions is always conducted at the FMMedia offices. Training dates are to be confirmed after the project development has been completed and paid for in full. The training sessions are usually 1 (One) hour long and focuses only on the functions that are covered in the approved brief and technical specification document. The cost for training is as per quotation or R550.00 per hour.

Manuals and Help files are not included as part of the development costs of any project. The creation of a manual is a time consuming process and billable as per quotation or R450.00 per hour.

Google Adwords and Google Analytics

As FMMedia is a Google Adwords and Google Analytics supplier and bound to the Google Program Terms. The client agrees that the client is aware of these terms and has read and understood the terms for both Google Adwords and Google Analytics and is also bound to these terms by signing this agreement.

The Google Adwords Advertising Terms and Conditions:
<https://adwords.google.com/select/lsandcfinder?country=ZA>
The Google Analytics Terms and Conditions:
http://www.google.com/analytics/tos_content.html

The location and content of the above terms may change from time to time, but will always remain enforced as per this agreement.

Search Engine Optimisation, Submissions and Traffic Building

FMMedia undertakes to provide services of optimising the client's web site for submission to local and/or international search engines. This service only caters for the work detailed on the product sheet and quotation and is only performed on a project that has already been developed. The process of submitting the Client's project to local and international search engines can take between 2 and 6 weeks to complete. FMMedia does not guarantee that it will give you certain results e.g. search engine positions improvements, increase of traffic etc. This process is very technical and controlled by each search engine.

You are entirely responsible for all information contained in your advertising. FMMedia is not responsible for this information. Please ensure that the information you provide is legal, accurate, and meets the requirements of this Terms of Service agreement.

Under no circumstances is FMMedia liable in any way for any content including, but not limited to, any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any content posted, emailed, or otherwise transmitted via the service. FMMedia reserves the right to withdraw, withhold, remove and/or suspend any advertising that may breach this agreement. The client will always be given the opportunity to amend the advertising so that it meets the requirements of this agreement. FMMedia assumes no liability for disruptions of the Service, including but not limited to vandalism, theft, Internet disruptions, extreme or severe weather conditions, or any other causes in the nature of "ACTS OF GOD" or force Majeure. FMMedia aims to provide an exceptional advertising service to all clients. If the client is not satisfied for any reason, please contact us directly and immediately so that a remedy may be established.

Data Transfer Limits

Our monthly data transfer limit is calculated per Month and outlined in our hosting product sheet, if data transfer exceeds this limit it will be charged at our standard rates per MB.

Whilst FMMedia recommends hosting companies to host websites, no guarantees can be made as to the availability or interruption of this service by FMMedia cannot accept liability for losses caused by the unavailability, malfunction or interruption of this service, or for loss of turnover, sales, revenue, profits or indirect, consequential or special loss.

Hosting Payment Policy & Billing Procedures

All accounts are set up on a pre-pay basis. We accept payments via Check, Online EFT (preferred) and Cash. Setup fees are charged for all new accounts that are paid on a monthly basis and major account changes and are non-refundable. All pricing is guaranteed for the term of pre-payment. FMMedia reserves the right to change prices at any time without prior notification. Payment is due each anniversary month or period following the date the account was established. If 5 (five) days have passed and payment has not been received, the account will be suspended until further notice. A penalty and activation fee will be charged. The customer is responsible for all money owed on the account from the time it was established to the time that the customer notifies FMMedia to request termination of services.

Payment of Accounts

A deposit is required from any new client before any work is carried out. It is the FMMedia policy that any outstanding accounts for work carried out by FMMedia or its affiliates are required to be paid in full, no later than 5 (five) days from the date of the invoice unless by prior arrangement with FMMedia.

Once a deposit is paid and work completed the client is obliged to pay the balance of payment in full. We will contact clients via Email and telephone to remind them of such payments if they are not received when due.

If accounts are not settled or FMMedia have not been contacted regarding the delay, access to the related website may be denied and web pages removed, we will then pass such cases to our attorney and debt collection agency.

Following consistent non payment of an invoice our Solicitors will contact the client in question, with a view to taking the matter further and if need be to seek payment through legal procedures, and if necessary court summons.

Payments must be made promptly based on the agreed schedule. Delinquent bills may be assessed a penalty charge if payment is not received within 5 days of the due date. If an amount remains delinquent 30 days after its due date, an additional 5% penalty may be added for each month of delinquency. FMMedia

reserves the right to remove any project from viewing on the Internet until final payment is made. In case collection proves necessary, the client agrees to pay all fees incurred by that process. This agreement becomes effective only when signed by an authorised representative of FMMedia. Regardless of the place of signing of this agreement, the client agrees that for purposes of venue, this agreement was entered into in Johannesburg, Gauteng, South Africa and any dispute will be litigated or arbitrated in Johannesburg, Gauteng, South Africa.

All payments will be made in ZAR R funds unless agreed upon in writing by both parties.

- a) For projects under R5, 000.00; payment on order.
- b) For projects over R5, 000.00; 50% on order and 50% on completion
- c) For projects over R30, 000.00; agreed in writing a down payment and balance of payments by milestones.

Passing of Rights

Once all amounts due to FMMedia from the client are paid and cleared the client is assigned the rights to use, as applicable, the products and services, including, the web or mobi site which includes the text, graphics, animation, audio components and digital components contained within the finished web site, in accordance with these terms and conditions, the Project Agreement and any applicable agreement, terms or licence but no rights of ownership are conveyed unless specifically stated in the Project Brief or Contract.

No such rights as described in above will pass until all amounts due to FMMedia from the client are paid. This means that FMMedia will have a lien over any service, products, data or information. If the client has not paid the invoice in full within 1 (one) month from the date of the invoice the client agrees that they will forfeit their rights. The rights to photographs, graphics and any third party items such as source code, always remain the property of their respective owners.

Unless the client has FMMedia's specific written agreement in the Project Brief or Contract, all intellectual property, products, including Content Management Systems, interfaces, navigational devices, menus, menu structures or arrangements, icons, help, all operational instructions, scripts, cgi applications, software, programming/source code, and all other components of any source or object computer code that comprises the Website, all Literal and non-literal expressions of ideas that operate, cause, create, direct, manipulate, access, or otherwise affect the Content and design elements used or developed and all software, and our products and results of our services remain FMMedia's property and FMMedia retain full ownership rights and all intellectual property rights. The client specifically agrees not to do anything that may in any way infringe upon or undermine FMMedia's rights, title, or interest in the Web or mobile APP or FMMedia's products and services. This includes, but is not limited to, any sale, transfer or gift of the whole or of any part of any item, data or anything whatsoever that FMMedia owns. The client fully understand that FMMedia may reproduce, reuse, develop and use in any other way FMMedia choose, anything within FMMedia's ownership

Complaints Procedure

Informal procedure

Anyone who experiences a problem with their service provided by FMMedia should raise the matter directly via Email to support@freemind.media, giving sufficient information to locate the material (such as a url) and clearly outlining the grounds for complaint.

FMMedia will approach the individual responsible for the material in question with a view to resolving the matter to the satisfaction of the complainant.

Formal complaints procedure

The formal complaints procedure should only be used where the complainant feels that the nature of the complaint is too serious to be dealt with informally, or where a satisfactory conclusion has not been reached after following the informal procedure.

A formal complaint should be made in writing to FMMedia, who will acknowledge receipt and ensure that the matter is looked into as soon as possible.

An initial response to any complaint can be expected within 7 (seven) days of its receipt; a full and considered response to the complaint should be completed within 30 days and any subsequent remedy implemented with the minimum of delay.

Legal Notice.

FMMedia does not warrant that the functions contained in the project will be uninterrupted or error-free. The entire risk as to the quality and performance of the project is with the client. In no event will FMMedia be liable to the client or any third party for any damages, including, but not limited to service interruptions caused by Acts of God or any other circumstances beyond our control, any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate this project, failure of any service provider, of any telecommunications carrier, of the Internet backbone, of any Internet servers, the client or site visitor's computer or Internet software, even if FMMedia has been advised of the possibility of such damages.

This Agreement.

This document constitutes the sole record of the Agreement between the parties, and no addition, variation or agreed cancellation of this Agreement, shall be of any force or effect unless in writing and signed by or on behalf of the parties.

No party shall be bound by any express or implied term, representation, warranty or the like which is not recorded in this Agreement.

No extension of time or indulgence which one party (the grantor) may grant to the other (the grantee) shall constitute a waiver of any of the rights of the grantor who shall not be precluded from exercising any past or future rights against the grantee.

The ownership of the domain and web site, including intellectual rights remains the property of FMEDIA until the full contract amount including any interest due or late payments has been settled in full.

Severability.

If any provision of this agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of South Africa finds that any provision of this agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed written, construed, and enforced as so limited.

Waiver of Contractual Right.

The failure of either party to enforce any provision of this agreement shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this agreement.

Breach

If either FMEDIA or the CLIENT breaches any term of this Agreement and fails to remedy such breach within 7 (seven) days of written notice requiring it to do so, then the party not in breach shall be entitled, but not obliged, without prejudice to any rights or remedies which it may have, to cancel this Agreement, or to claim immediate performance and/or payment by the party in breach.