



TAG: DOMAINCOLONY

**Domaincolony Limited
Trading as
Domains in a Box**

STANDARD TERMS and CONDITIONS

**BY ORDER OF THE BOARD
July 2021**

Terms & Conditions

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THE FOLLOWING CLAUSES:

1. CLAUSE 6.3 (INTELLECTUAL PROPERTY RIGHTS INDEMNITY).
2. CLAUSE 9 (LIMITATION OF LIABILITY)
3. CLAUSE 10.5 (TRANSFER OF TITLE FOR UNPAID FOR GOODS or SERVICES)
4. CLAUSE 13.13 (JURISDICTION, COURT PROCEEDINGS and COSTS).

1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS:

1.1 Definitions:

Auxiliary Services: those services also offered by the Supplier as shown in the Schedule to these Terms and Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5 (Charges and payment).

Client: the person or firm who purchases Services from the Supplier.

Client Content: means any Content created or supplied or made available by the Client to the Supplier in accordance with the Contract and as set out in the Engagement Letter, including without limitation all and any text, graphics, logos, photographs, images, and moving images.

Client Default: has the meaning set out in clause 4.2.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

Confidential Information: means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, known-how, intellectual property, assets, strategy, products and clients.

Contract: the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Data Controller: has the meaning set out in article 4(7) of the GDPR

Data Processor: has the meaning set out in article 4(8) of the GDPR.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Data Subject: an individual who is the subject of Personal Data.

Engagement Letter: the Supplier's engagement letter setting out the Services to be provided to the Client and any specific terms and conditions which apply to the provision of such Services in addition to these Conditions.

Force Majeure: means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder. Force Majeure does not include, without limitation, inability to pay or market or other circumstances which may make the terms of the Contract unattractive to a party.

GDPR: the General Data Protection Regulation (EU) 2016/679.

Hosted Data: all web pages, web content, data bases, mailboxes, IT services, software and DNS records which reside upon the Supplier's infrastructure.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Client's order for Services as set out in the Engagement Letter, overleaf or the Client's written acceptance of a quotation by the Supplier, as the case may be.

Personal Data: has the meaning set out in article 4(1) of the GDPR and includes any information relating to a person which enables the individual to be identified, in respect of which the Client is the Data Controller and in relation to which the Supplier is the Data Processor, providing Services under the Contract.

Processing and Process: have the meaning set out article 4(2) in the GDPR.

Services: the services supplied by the Supplier to the Client as set out in the Specification.

Specification: the description or specification of the Services provided in the Engagement Letter.

Supplier: Domaincolony Limited, Trading as "Domains in a Box" registered in England and Wales with company number 11017616. Registered office at Unit 2, Fullers Yard, MARGATE CT9 1NA

Supplier Materials: has the meaning set out in clause 4.1(h).

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the

Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Value Added Tax:

Domaincolony Limited is registered for VAT with UK HMRC under VAT Registration Number GB369 586 041

Terms & Conditions

THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 9(LIMITATION OF LIABILITY) AND CLAUSE 6.3 (INTELLECTUAL PROPERTY RIGHTS INDEMNITY).

1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS:

1.1 Definitions:

Auxiliary Services: those services also offered by the Supplier as shown in the Schedule to these Terms and Conditions.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Services in accordance with clause 5 (Charges and payment).

Client: the person or firm who purchases Services from the Supplier.

Client Content: means any Content created or supplied or made available by the Client to the Supplier in accordance with the Contract and as set out in the Engagement Letter, including without limitation all and any text, graphics, logos, photographs, images, and moving images.

Client Default: has the meaning set out in clause 4.2.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 13.7.

Confidential Information: means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, known-how, intellectual property, assets, strategy, products and clients.

Contract: the contract between the Supplier and the Client for the supply of Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Data Controller: has the meaning set out in article 4(7) of the GDPR

Data Processor: has the meaning set out in article 4(8) of the GDPR.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and

regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Data Subject: an individual who is the subject of Personal Data.

Engagement Letter: the Supplier's engagement letter setting out the Services to be provided to the Client and any specific terms and conditions which apply to the provision of such Services in addition to these Conditions.

Force Majeure: means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder. Force Majeure does not include, without limitation, inability to pay or market or other circumstances which may make the terms of the Contract unattractive to a party.

GDPR: the General Data Protection Regulation (EU) 2016/679.

Hosted Data: all web pages, web content, data bases, mailboxes, IT services, software and DNS records which reside upon the Supplier's infrastructure.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Client's order for Services as set out in the Engagement Letter, overleaf or the Client's written acceptance of a quotation by the Supplier, as the case may be.

Personal Data: has the meaning set out in article 4(1) of the GDPR and includes any information relating to a person which enables the individual to be identified, in respect of which the Client is the Data Controller and in relation to which the Supplier is the Data Processor, providing Services under the Contract.

Processing and Process: have the meaning set out article 4(2) in the GDPR.

Services: the services supplied by the Supplier to the Client as set out in the Specification.

Specification: the description or specification of the Services provided in the Engagement Letter.

Supplier: Domaincolony Limited, Trading as "Domains in a Box" registered in England and Wales with company number 11017616. Registered office at Unit 2, Fullers Yard, MARGATE CT9 1NA

Supplier Materials: has the meaning set out in clause 4.1(h).

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 Interpretation:

a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

c) A reference to **writing** or **written** includes emails but not faxes.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order; or

(b) the Supplier commencing the provision of the Services to the Client;

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions and any other terms and conditions set out in the Engagement Letter apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any estimate given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

2.6 If there is an inconsistency between any of the provisions of these Conditions and the Engagement Letter, the provisions of the Engagement Letter shall prevail.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 The Client will have no entitlement to or interest in any internet protocol address allocated by the Supplier during the Contract or on termination of the Contract.

3.6 The Supplier warrants that it shall make reasonable efforts to provide the Client with prior email notification of all scheduled and emergency interruptions to the availability of the Services and shall use reasonable endeavours to keep such interruptions to a minimum.

3.7 The Supplier warrants that:-

(a) the Supplier has the right, power and authority to enter into this Contract and grant to the Client the rights (if any) contemplated herein;

(b) the Services will be performed:

(i) by suitably competent personnel who shall exercise all due skill and care and all due diligence in the execution thereof as to conform with all statutory requirements and applicable regulations relating to the Services;

(ii) in such a way as not to cause any fault or malfunction in any related software, products or system of the Client; and

(iii) in such a way as not to cause any interruption to the business processes of the Client (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner).

3.8 The warranties specified in clause 3.7 above are subject to the Client giving notice to the Supplier as soon as it is reasonably able upon becoming aware of the breach of warranty. When notifying the Supplier of the breach the Client

shall use reasonable endeavours to provide the Supplier with such documented information, details and assistance as the Supplier may reasonably request.

3.9 All other representations and warranties, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

3.10 Any warranties given by the Supplier with respect to the performance of the Services and/or any systems shall not apply to the extent that the defect or error is wholly caused by any Client Content or third party software used in connection with the systems.

3.11 The Supplier also supplies the Auxiliary Services which are available for the Client to simplify administration. Any Auxiliary Services will be agreed in writing between the Supplier and the Client prior to such service commencing and will be subject at all times to the provisions of these Conditions (including for the avoidance of doubt clause 9.5 of these Conditions) provided that in the case of any conflict between any such order for any Auxiliary Services and these Conditions any conflicting terms set out in the order shall prevail.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

(a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Client's premises for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) comply with all applicable laws, including health and safety laws; and

(h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk,

maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

(c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

4.3 As the Data Controller, the Client remains responsible for:

(a) checking that any Data Processor it uses is competent to Process the Personal Data in accordance with all of the requirements of the relevant Data Protection Legislation;

(b) only using a Data Processor that can provide "sufficient guarantees" in terms of its resources and expertise, to implement technical and organisational measures to comply with the relevant Data Protection Legislation and to protect the rights of any data subjects; and

(c) having a written contract in place with each Data Processor which complies with all of the requirements of the relevant Data Protection Legislation.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be calculated on a time and skills basis:

(a) the Charges shall be calculated in accordance with the Supplier's hourly fee rates, as set out in the Engagement Letter;

(b) the Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection

with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.2 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date.

5.3 The Client shall set up a direct debit with the Supplier to pay the full amount of each invoice submitted by the Supplier on a rolling monthly basis unless agreed otherwise in writing by the Supplier or in the Engagement Letter. In the absence of a direct debit being set up by the Client or in any event, the Client shall pay any invoices submitted by the Supplier:

(a) within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.4 The Supplier reserves the right, in its sole discretion, to suspend any or all of the Services if any payments owing under this Contract are more than 30 days overdue or if the Client has failed to set up a direct debit with the Supplier in accordance with clause

5.3, and shall have no liability of any kind to the Client as a result of any suspension of any or all of the Services in accordance with this clause including but not limited to a domain name renewal fee not being paid by the relevant due date and the renewal/registration of that domain name being unable to be made.

5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6 If the Client fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause

5.4 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.6 will accrue each day at the rate of 8% a year.

5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier.

6.2 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Contract for the purpose of providing the Services to the Client.

6.3 INTELLECTUAL PROPERTY RIGHTS INDEMNITY Each party (the **Indemnifying Party**) shall indemnify and keep indemnified the other (the **Indemnified Party**) from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Indemnified Party as a result of or in connection with any action, demand or claim that use or operation of any content or software provided by the Indemnifying Party infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Indemnifying Party shall not have any such liability if the Indemnified Party:

(a) does not notify the Indemnifying Party in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;

(b) makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Indemnifying Party (which shall not be unreasonably withheld or delayed);

(c) does not let the Indemnifying Party at its request and own expense, have the conduct of or settle all negotiations and litigation arising from the IPR Claim; or

(d) does not, at the Indemnifying Party's request and own expense, give the Indemnified Party all reasonable assistance in the circumstances described above.

7. DATA PROTECTION AND DATA PROCESSING

7.1 The parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and the Supplier is the Data Processor.

7.3 Without prejudice to the generality of clause 7.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the Supplier and/or lawful collection or Processing of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of the Contract.

7.4 Without prejudice to the generality of clause 7.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data

Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(e) notify the Client without undue delay on becoming aware of a Personal Data Breach;

(f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

7.5 The Supplier confirms that it will enter into a written agreement with any third party processor it uses under the Contract which will reflect the requirements of the Data Protection Legislation. Where necessary to comply with its obligations under the Contract the Supplier may use third party cloud providers and the Client consents to this. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 7.5.

7.6 The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Client's instructions.

7.7 The Client acknowledges that the Supplier has no control over data that is submitted onto the Supplier's systems and as such the Client is responsible for any data it submits.

8. DATA PROTECTION AND DATA PROCESSING OUTSIDE OF THE EEA

8.1 The Supplier shall not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:

(a) the Supplier has appropriate safeguards in relation to the transfer;

(b) the data subject has enforceable rights and effective legal remedies; and

(c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred

9. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of damage to goodwill; and

(g) any indirect or consequential loss.

9.3 Subject to clause 9.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £2,000,000.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5 Subject to clause 9.1 above and including (but not limited to) any Auxiliary Service the Supplier shall not be liable for any loss, damage or other liability in

connection with any third party software, product or service supplied or facilitated.

9.6 This clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Unless provided otherwise in the Engagement Letter and without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice. Any time accrued on a monthly or monthly balanced package will be lost after the one month notice period, however packages can be reduced to a maximum of 50% and retain the accrued time.

10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within one month of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment; or there is a change of Control of the Client.

10.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under the Contract on the due date for payment, the Client fails to set up a direct debit with the Supplier in accordance with clause 5.3 the Client becomes

subject to any of the events listed in clause 10.2(b) to clause 10.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.

10.5 Should the Client fail to renew any domain or pay for any item whether tangible or not in the possession or control of the Supplier within 60 days, then full title of the same shall pass to the Supplier without right of recompense or recovery by the Client.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract either fully or in part:

(a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of the Supplier Materials which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract ; and

(c) the Client and the Supplier shall perform their respective obligations with respect to exit management as set out in these Conditions and/or the Engagement Letter.

11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. EXIT MANAGEMENT

12.1 If this Contract expires or is terminated in whole or in part for any reason the Supplier shall, subject to payment of any reasonable fees (and any outstanding payments due being met and cleared), provide all reasonable assistance to the Client to ensure the orderly migration of the Contract, and the Services to the Client or, at the Client's request, a replacement Supplier. The remaining provisions of this clause 12.1 shall not prejudice or restrict the generality of this obligation.

12.2 Immediately on termination of the Contract (subject to all outstanding and due payments being met and cleared), the Supplier shall return to the Client or as directed by the Client all Client Content together with all other materials and assets and other information provided to the Supplier by the Client. The Supplier shall not be obliged to supply to the Client any Supplier software at termination or expiry of the Contract and any licence of such software shall not continue following termination or expiry of the Contract except as expressly agreed by the parties.

12.3 The Supplier shall (if requested by the Client to do so and at the Client's reasonable cost and expense at the then current rate of the Supplier) continue to provide any Auxiliary Services on a monthly basis subject to 30 days' prior notice to cancel in writing by either party.

13. GENERAL

13.1 **Succession.** The Contract shall be binding upon, and ensure to the benefit of each of the parties, their respective personal representatives and their respective successors in title.

13.2 **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.

13.3 **Assignment and Other Dealings.** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

13.4 **Confidentiality.**

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party, except as permitted by clause 13.4(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.4; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.5 Non-Solicitation. The Client shall not, without the prior written consent of the Supplier, at any time from the date of commencement of the Contract to the expiry of 12 months after the termination or expiry of the Contract, solicit or entice away from the Supplier, or employ or attempt to employ any person who is, or has been, engaged as an employee, worker, sub-contractor, licensee, manager, director or consultant of the Supplier in the provision of the Services.

13.6 Entire Agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

13.7 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.8 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.9 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.10 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other

case); or sent by email to the address specified in the Engagement Letter. Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00am on the next Business Day after transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.11 Third Party Rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.12 Governing Law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

13.13 Jurisdiction, Court Proceedings and Costs. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

ALL CLAIMS MUST be commenced in the CANTERBURY County Court or such other Court as may from time to time be responsible for the administration of civil justice for the town or MARGATE, Kent. YOU WILL NOT commence or request transfer of any proceedings at or to any other Court including the HIGH COURT of ENGLAND without leave of the Canterbury County Court or in accordance with the Court Practice Rules published for the Canterbury County Court.

YOU AGREE that any proceedings will start, continue and be handled in accordance with the SMALL CLAIMS process and you will not petition to Court to amend or alter the track.

In all circumstances, each side shall pay its own legal costs.

13.14 Call Recording. The Supplier reserves the right to record telephone calls for training and development purposes and will remit any recordings to any Registrar, Criminal, Tax or Civil Authority upon lawful request.

13.15 Interpretation of Functionality. Any reference to functionality, content or design works mentioned in an estimate or a functional specification is given with the proviso that it is the Supplier's interpretation that takes precedence as to what is meant and therefore included in the estimate or price. Clarification of what is meant on any particular point can be requested by the Client at any time. It is at the Supplier's discretion to confirm whether any assumed or implied functionality is included as part of the price stated. Any Services carried out hold a limited discretionary warranty and are only developed and tested on supported browsers set out in the Engagement Letter or otherwise specified by the Supplier.

SCHEDULE

AUXILIARY SERVICES

1. Website Hosting
2. Application Hosting
3. Data backup services
4. Data replication services
5. Email services
6. Office 365 services
7. Domain name and management services
8. Anti-Virus services
9. Hardware provision*
10. Telecoms
11. Connectivity
12. SSL certificates
13. IT monitoring software
14. PPC marketing
15. Tracking phone numbers

16. Disaster Recovery suite

17. Email marketing

18. Software licensing

* Hardware may be procured by the Supplier for the Client on one of the following 2 options. The Client agrees that by agreeing to proceed with any Hardware Provision, the default option will be deemed to be the hardware procurement option unless agreed otherwise in writing:

1. Default Option - Hardware Procurement Service only (with no claim management service included)

The Supplier provides a hardware procurement service. Where by items are ordered and supplied for ease of administration to the Client. No mark-up will be applied to the hardware however if there are any defects which are covered by the manufacturers warranties any claim management provided by the Supplier with will be charged to the Client at the then current charge out rate of the Supplier and it is agreed that the Supplier shall not have any liability to the Client in relation to any such fault or issue. The Client will be given the option to manage the claim themselves directly with the manufacturer. Any other set up or other work undertaken by the Supplier in relation to installing or formatting the hardware to the Client's specifications or managing any claims by the Client to the manufacturer in the event of any hardware fault/issue will be charged to the Client at the then current charge out rate of the Supplier and it is agreed that the Supplier shall not have any liability to the Client in relation to any such fault or issue arising from this.

2. Specified Service Option - Hardware Procurement and Claim Management Service

The Supplier provides a hardware procurement service. The Supplier would charge a 20% handling fee on all hardware provided under the service and would then replace, upgrade and manage any defects which are covered by the manufacturer's warranties without charge to the Client. However any set up or other work undertaken by the Supplier in relation to installing or formatting the hardware to the Client's specifications will be charged to the Client at the then current charge out rate of the Supplier and it is agreed that the Supplier shall not have any liability to the Client in relation to any such fault or issue.

1.2 Interpretation:

a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

c) A reference to **writing** or **written** includes emails but not faxes.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted on the earlier of:

(a) the Supplier issuing written acceptance of the Order; or

(b) the Supplier commencing the provision of the Services to the Client;

at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions and any other terms and conditions set out in the Engagement Letter apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any estimate given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.

2.6 If there is an inconsistency between any of the provisions of these Conditions and the Engagement Letter, the provisions of the Engagement Letter shall prevail.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Client in accordance with the Specification in all material respects.

3.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Engagement Letter, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

3.4 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill.

3.5 The Client will have no entitlement to or interest in any internet protocol address allocated by the Supplier during the Contract or on termination of the Contract.

3.6 The Supplier warrants that it shall make reasonable efforts to provide the Client with prior email notification of all scheduled and emergency interruptions to the availability of the Services and shall use reasonable endeavours to keep such interruptions to a minimum.

3.7 The Supplier warrants that:-

(a) the Supplier has the right, power and authority to enter into this Contract and grant to the Client the rights (if any) contemplated herein;

(b) the Services will be performed:

(i) by suitably competent personnel who shall exercise all due skill and care and all due diligence in the execution thereof as to conform with all statutory requirements and applicable regulations relating to the Services;

(ii) in such a way as not to cause any fault or malfunction in any related software, products or system of the Client; and

(iii) in such a way as not to cause any interruption to the business processes of the Client (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner).

3.8 The warranties specified in clause 3.7 above are subject to the Client giving notice to the Supplier as soon as it is reasonably able upon becoming aware of the breach of warranty. When notifying the Supplier of the breach the Client

shall use reasonable endeavours to provide the Supplier with such documented information, details and assistance as the Supplier may reasonably request.

3.9 All other representations and warranties, whether statutory or implied, are hereby expressly excluded to the fullest extent permitted by law.

3.10 Any warranties given by the Supplier with respect to the performance of the Services and/or any systems shall not apply to the extent that the defect or error is wholly caused by any Client Content or third party software used in connection with the systems.

3.11 The Supplier also supplies the Auxiliary Services which are available for the Client to simplify administration. Any Auxiliary Services will be agreed in writing between the Supplier and the Client prior to such service commencing and will be subject at all times to the provisions of these Conditions (including for the avoidance of doubt clause 9.5 of these Conditions) provided that in the case of any conflict between any such order for any Auxiliary Services and these Conditions any conflicting terms set out in the order shall prevail.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

(a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier;

(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

(e) prepare the Client's premises for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(g) comply with all applicable laws, including health and safety laws; and

(h) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk,

maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and

(c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

4.3 As the Data Controller, the Client remains responsible for:

(a) checking that any Data Processor it uses is competent to Process the Personal Data in accordance with all of the requirements of the relevant Data Protection Legislation;

(b) only using a Data Processor that can provide "sufficient guarantees" in terms of its resources and expertise, to implement technical and organisational measures to comply with the relevant Data Protection Legislation and to protect the rights of any data subjects; and

(c) having a written contract in place with each Data Processor which complies with all of the requirements of the relevant Data Protection Legislation.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be calculated on a time and skills basis:

(a) the Charges shall be calculated in accordance with the Supplier's hourly fee rates, as set out in the Engagement Letter;

(b) the Supplier shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom the Supplier engages in connection

with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.2 The Supplier reserves the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date.

5.3 The Client shall set up a direct debit with the Supplier to pay the full amount of each invoice submitted by the Supplier on a rolling monthly basis unless agreed otherwise in writing by the Supplier or in the Engagement Letter. In the absence of a direct debit being set up by the Client or in any event, the Client shall pay any invoices submitted by the Supplier:

(a) within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.4 The Supplier reserves the right, in its sole discretion, to suspend any or all of the Services if any payments owing under this Contract are more than 30 days overdue or if the Client has failed to set up a direct debit with the Supplier in accordance with clause

5.3, and shall have no liability of any kind to the Client as a result of any suspension of any or all of the Services in accordance with this clause including but not limited to a domain name renewal fee not being paid by the relevant due date and the renewal/registration of that domain name being unable to be made.

5.5 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6 If the Client fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause

5.4 the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.6 will accrue each day at the rate of 8% a year.

5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier.

6.2 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to the Supplier for the term of the Contract for the purpose of providing the Services to the Client.

6.3 INTELLECTUAL PROPERTY RIGHTS INDEMNITY Each party (the **Indemnifying Party**) shall indemnify and keep indemnified the other (the **Indemnified Party**) from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Indemnified Party as a result of or in connection with any action, demand or claim that use or operation of any content or software provided by the Indemnifying Party infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Indemnifying Party shall not have any such liability if the Indemnified Party:

(a) does not notify the Indemnifying Party in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;

(b) makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Indemnifying Party (which shall not be unreasonably withheld or delayed);

(c) does not let the Indemnifying Party at its request and own expense, have the conduct of or settle all negotiations and litigation arising from the IPR Claim; or

(d) does not, at the Indemnifying Party's request and own expense, give the Indemnified Party all reasonable assistance in the circumstances described above.

7. DATA PROTECTION AND DATA PROCESSING

7.1 The parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and

Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.

7.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Data Controller and the Supplier is the Data Processor.

7.3 Without prejudice to the generality of clause 7.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the Supplier and/or lawful collection or Processing of the Personal Data by the Supplier on behalf of the Client for the duration and purposes of the Contract.

7.4 Without prejudice to the generality of clause 7.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that Personal Data only on the documented written instructions of the Client unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Personal Data, the Supplier shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(e) notify the Client without undue delay on becoming aware of a Personal Data Breach;

(f) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

7.5 The Supplier confirms that it will enter into a written agreement with any third party processor it uses under the Contract which will reflect the requirements of the Data Protection Legislation. Where necessary to comply with its obligations under the Contract the Supplier may use third party cloud providers and the Client consents to this. As between the Client and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 7.5.

7.6 The Client acknowledges that the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Client's instructions.

7.7 The Client acknowledges that the Supplier has no control over data that is submitted onto the Supplier's systems and as such the Client is responsible for any data it submits.

8. DATA PROTECTION AND DATA PROCESSING OUTSIDE OF THE EEA

8.1 The Supplier shall not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:

- (a) the Supplier has appropriate safeguards in relation to the transfer;
- (b) the data subject has enforceable rights and effective legal remedies; and
- (c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred

9. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

9.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

(a) loss of profits;

(b) loss of sales or business;

(c) loss of agreements or contracts;

(d) loss of anticipated savings;

(e) loss of use or corruption of software, data or information;

(f) loss of damage to goodwill; and

(g) any indirect or consequential loss.

9.3 Subject to clause 9.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £2,000,000.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

9.5 Subject to clause 9.1 above and including (but not limited to) any Auxiliary Service the Supplier shall not be liable for any loss, damage or other liability in connection with any third party software, product or service supplied or facilitated.

9.6 This clause 9 shall survive termination of the Contract.

10. TERMINATION

10.1 Unless provided otherwise in the Engagement Letter and without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice. Any time accrued on a monthly or monthly balanced package will be lost after the one month notice

period, however packages can be reduced to a maximum of 50% and retain the accrued time.

10.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within one month of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment; or there is a change of Control of the Client.

10.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount due under the Contract on the due date for payment, the Client fails to set up a direct debit with the Supplier in accordance with clause 5.3 the Client becomes subject to any of the events listed in clause 10.2(b) to clause 10.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.

11. CONSEQUENCES OF TERMINATION

11.1 On termination of the Contract either fully or in part:

(a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but

for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;

(b) the Client shall return all of the Supplier Materials which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract ; and

(c) the Client and the Supplier shall perform their respective obligations with respect to exit management as set out in these Conditions and/or the Engagement Letter.

11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. EXIT MANAGEMENT

12.1 If this Contract expires or is terminated in whole or in part for any reason the Supplier shall, subject to payment of any reasonable fees (and any outstanding payments due being met and cleared), provide all reasonable assistance to the Client to ensure the orderly migration of the Contract, and the Services to the Client or, at the Client's request, a replacement Supplier. The remaining provisions of this clause 12.1 shall not prejudice or restrict the generality of this obligation.

12.2 Immediately on termination of the Contract (subject to all outstanding and due payments being met and cleared), the Supplier shall return to the Client or as directed by the Client all Client Content together with all other materials and assets and other information provided to the Supplier by the Client. The Supplier shall not be obliged to supply to the Client any Supplier software at termination or expiry of the Contract and any licence of such software shall not continue following termination or expiry of the Contract except as expressly agreed by the parties.

12.3 The Supplier shall (if requested by the Client to do so and at the Client's reasonable cost and expense at the then current rate of the Supplier) continue to provide any Auxiliary Services on a monthly basis subject to 30 days' prior notice to cancel in writing by either party.

13. GENERAL

13.1 **Succession.** The Contract shall be binding upon, and ensure to the benefit of each of the parties, their respective personal representatives and their respective successors in title.

13.2 **Force Majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control.

13.3 **Assignment and Other Dealings.** The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

13.4 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party, except as permitted by clause 13.4(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.4; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13.5 **Non-Solicitation.** The Client shall not, without the prior written consent of the Supplier, at any time from the date of commencement of the Contract to the expiry of 12 months after the termination or expiry of the Contract, solicit or entice away from the Supplier, or employ or attempt to employ any person who is, or has been, engaged as an employee, worker, sub-contractor, licensee, manager, director or consultant of the Supplier in the provision of the Services.

13.6 Entire Agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

13.7 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.8 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

13.9 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.10 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Engagement Letter.

Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00am on the next Business Day after transmission.

This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

13.11 Third Party Rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

13.12 Governing Law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

13.13 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

13.14 Call Recording. The Supplier records telephone calls for training and development purposes.

13.15 Interpretation of Functionality. Any reference to functionality, content or design works mentioned in an estimate or a functional specification is given with the proviso that it is the Supplier's interpretation that takes precedence as to what is meant and therefore included in the estimate or price. Clarification of what is meant on any particular point can be requested by the Client at any time. It is at the Supplier's discretion to confirm whether any assumed or implied functionality is included as part of the price stated. Any Services carried out hold a limited discretionary warranty and are only developed and tested on supported browsers set out in the Engagement Letter or otherwise specified by the Supplier.

SCHEDULE

AUXILIARY SERVICES

1. Website Hosting
2. Application Hosting
3. Data backup services
4. Data replication services
5. Email services
6. Office 365 services

7. Domain name and management services

8. Anti-Virus services

9. Hardware provision*

10. Telecoms

11. Connectivity

12. SSL certificates

13. IT monitoring software

14. PPC marketing

15. Tracking phone numbers

16. Disaster Recovery suite

17. Email marketing

18. Software licensing

* Hardware may be procured by the Supplier for the Client on one of the following 2 options. The Client agrees that by agreeing to proceed with any Hardware Provision, the default option will be deemed to be the hardware procurement option unless agreed otherwise in writing:

1. Default Option - Hardware Procurement Service only (with no claim management service included)

The Supplier provides a hardware procurement service. Where by items are ordered and supplied for ease of administration to the Client. No mark-up will be applied to the hardware however if there are any defects which are covered by the manufacturers warranties any claim management provided by the Supplier with will be charged to the Client at the then current charge out rate of the Supplier and it is agreed that the Supplier shall not have any liability to the Client in relation to any such fault or issue. The Client will be given the option to manage the claim themselves directly with the manufacturer. Any other set up or other work undertaken by the Supplier in relation to installing or formatting the hardware to the Client's specifications or managing any claims by the Client to the manufacturer in the event of any hardware fault/issue will be charged to the Client at the then current charge out rate of the Supplier and it is agreed that the

Supplier shall not have any liability to the Client in relation to any such fault or issue arising from this.

2. Specified Service Option - Hardware Procurement and Claim Management Service

The Supplier provides a hardware procurement service. The Supplier would charge a 20% handling fee on all hardware provided under the service and would then replace, upgrade and manage any defects which are covered by the manufacturer's warranties without charge to the Client. However any set up or other work undertaken by the Supplier in relation to installing or formatting the hardware to the Client's specifications will be charged to the Client at the then current charge out rate of the Supplier and it is agreed that the Supplier shall not have any liability to the Client in relation to any such fault or issue.