



Web Services Terms

summary proposal document

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Web Services Terms

These Web Services Terms contain the terms and conditions upon which we provide our services.

We will ask you to agree to these Web Services Terms, and one or more Statements of Work, before we begin working with you.

1. Definitions and interpretation

1.1 In the Agreement:

"Affiliate" means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

"Agreement" means:

- (a) these Web Services Terms;
- (b) any Statements of Work agreed between the parties;
- (c) the Schedules to these Web Services Terms insofar as applied by a Statement of Work; and
- (d) any amendments to the Agreement from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 on a Business Day;

"Charges" means the amounts payable by the Customer to the Company under or in relation to the Agreement (as set out in the Schedules and Statements of Work);

"Company" means Paul Allington trading as Intelligent Penguin, which has its principal place of business at 12 Mount Pleasant Cottages, Saffron Walden, CB11 4AE;

"Confidential Information" means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as "confidential", described as "confidential" or reasonably understood to be confidential;

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

"Customer" means the company, firm or person specified in the Statement of Work;

"Effective Date" means 1st April 2010;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods,

riots, terrorist attacks and wars);

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

"Minimum Term" means the period of 3 Months starting on the Effective Date;

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

"Schedules" means the schedules attached to the Web Services Terms;

"Services" means the services provided under the Agreement as specified in the Schedules and Statements of Work;

"Statement of Work" means a statement of work signed by each of the parties specifying the scope of the Services and other matters relating to the Agreement;

"Term" means the term of the Agreement;

1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of the Agreement.

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

2. Term

The Agreement will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause 13.

3. Services

The Company will provide to the Customer during the Term the Services specified in the applicable Statements of Work.

4. Customer obligations

4.1 The Customer will provide the Company with all co-operation, information and documentation reasonably required for the provision of the Services, and the Customer will be responsible for procuring any third party co-operation reasonably required for the provision of the Services.

- 4.2 Save as expressly provided in the Agreement, the Customer will be responsible for obtaining suitable licences of third party software (such as email client software) which are required for the full use of the Services.
- 4.3 It is the Customer's responsibility to keep any passwords relating to the Services confidential, and to change such passwords on a regular basis. The Customer will notify the Company immediately if it becomes aware that a password relating to the Services is or may have been compromised or misused.

5. Use of the Services

- 5.1 The Customer must not use any of the Services:
- (a) to host, store, send, relay or process any:
 - (i) material which breaches any applicable laws, regulations or legally binding codes, or infringes any third party Intellectual Property Rights or other third party rights, or may give rise to any form of legal action against the Company or the Customer or any third party;
 - (ii) pornographic or lewd material; or
 - (iii) messages or communications which are offensive, abusive, indecent or obscene, are likely to cause annoyance, inconvenience or anxiety to another internet user, or constitute spam or bulk unsolicited mail;
 - (b) for any purpose which is unlawful, fraudulent, or infringes any third party rights;
 - (c) in any way which may put the Company in breach of a contractual or other obligation owed by the Company to any internet service provider.
- 5.2 The Customer must ensure that all materials provided to the Company by or on behalf of the Customer in connection with the Agreement, and the use of those materials by the Company in accordance with the terms of the Agreement will not infringe any person's Intellectual Property Rights or other legal rights, will not breach any applicable laws or regulations, and will not give rise to a cause of action against any person in any jurisdiction.
- 5.3 Where the Company reasonably suspects that there has been a breach of the provisions of this Clause 5, the Company may:
- (a) delete or amend the relevant materials; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to any or all Services while it investigates the matter.
- 5.4 Any breach by the Customer of this Clause 5 will be deemed to be a material breach of the Agreement for the purposes of Clause 13.

6. Charges and payment

- 6.1 The Company will issue invoices for the Charges to the Customer in accordance with the provisions of the Schedules and Statement(s) of Work.

- 6.2 The Customer will pay the Charges to the Company:
- (a) on or before the dates set out in the relevant Schedules or Statement(s) of Work; or
 - (b) where no such dates are set out in the relevant Schedules or Statement(s) of Work, within 30 days of the date of issue of an invoice in accordance with Clause 6.1.
- 6.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
- 6.4 Charges must be paid by debit or credit card, direct debit, bank transfer or by cheque (using such payment details as are notified by the Company to the Customer from time to time).
- 6.5 If the Customer does not pay any amount properly due to the Company under or in connection with the Agreement, the Company may:
- (a) charge the Customer interest on the overdue amount at the rate of 10% per year above the base rate of Barclays Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 The Company will:
- (a) ensure that the personnel providing the Services complete records of their time spent providing those Services;
 - (b) retain such records during the Term and for a period of 12 months following the end of the Term; and
 - (c) supply such records to the Customer within 30 Business Days following receipt of a written request to do so.
- 6.7 The Company will:
- (a) collect and collate evidence of all expenses passed on to the Customer through the Charges;
 - (b) retain such evidence during the Term and for a period of 12 months following the end of the Term; and
 - (c) supply such evidence to the Customer within 30 Business Days following receipt of a written request to do so.
- [6.8 The Company may vary the Charges on and from any anniversary of the Effective Date by giving to the Customer not less than 30 days' written notice of the variation.

7. Warranties

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

- 7.2 The Company warrants to the Customer:
- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
 - (b) that it will perform its obligations under the Agreement with reasonable care and skill.
- 7.3 All of the parties' obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

8. Indemnity

The Customer hereby indemnifies and undertakes to keep indemnified the Company against all liabilities, losses, costs, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising out of or in connection with any breach by the Customer of any term of the Agreement.

9. Limitations and exclusions of liability

- 9.1 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit any liability of a party in any way that is not permitted under applicable law; or
 - (d) exclude any liability of a party that may not be excluded under applicable law.
- 9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in the Agreement:
- (a) are subject to Clause 9.1;
 - (b) govern all liabilities arising under the Agreement or any collateral contract or in relation to the subject matter of the Agreement or any collateral contract, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
 - (c) will not limit or exclude the liability of the parties under the express indemnities set out the Agreement.
- 9.3 The Company will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings. The limitations and exclusions of liability in this Clause [9.3] will apply whether or not the liability in question arises out of any reckless, deliberate, personal and/or repudiatory conduct or breach of contract.
- 9.4 The Company will not be liable for any loss of business, contracts or commercial opportunities.

- 9.5 The Company will not be liable for any loss of or damage to goodwill or reputation.
- 9.6 The Company will not be liable in respect of any loss or corruption of any data, database or software.
- 9.7 The Company will not be liable in respect of any special, indirect or consequential loss or damage.
- 9.8 The Company will not be liable for any losses arising out of a Force Majeure Event.
- 9.9 The Company's liability in relation to any event or series of related events will not exceed the greater of:
- (a) £50; and
 - (b) the total amount paid or (if greater) payable by the Customer to the Company under the Agreement during the 3 month period immediately preceding the event or events giving rise to the claim.
- 9.10 The Company's aggregate liability under the Agreement and any collateral contracts will not exceed the greater of:
- (a) £50; and
 - (b) the total amount paid or (if greater) payable by the Customer to the Company under the Agreement.

10. Data protection

- 10.1 The Customer warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Company under the Agreement, and that the processing of that Personal Data by the Company for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 1998).
- 10.2 The Company warrants that:
- (a) it will act only on instructions from the Customer in relation to the processing of any Personal Data performed by the Company on behalf of the Customer; and
 - (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Company on behalf of the Customer.

11. Confidentiality

- 11.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 11.
- 11.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.

- 11.3 The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 11.4 These obligations of confidentiality will not apply to Confidential Information that:
- (a) has been published or is known to the public (other than as a result of a breach of the Agreement);
 - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
 - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.

12. Publicity

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

13. Termination

- 13.1 Either party may terminate the Agreement at any time by giving at least 30 days' written notice to the other party expiring at any time after the later of:
- (a) the end of the Minimum Term; and
 - (b) the end of any minimum period specified in any Schedule or Statement of Work.
- 13.2 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
- (a) commits any material breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
 - (b) persistently breaches the terms of the Agreement.
- 13.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;

- (iv) is or becomes insolvent or is declared insolvent; or
- (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);
- (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

14. Effects of termination

- 14.1 Termination of the Agreement will not affect either party's accrued rights (including accrued rights to be paid) as at the date of termination.
- 14.2 Subject to Clause 14.1, upon termination all the provisions of the Agreement will cease to have effect, save that:
- (a) the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 6.5, 6.6, 6.7, 8, 9, 11, 14, 15 and 17; and
 - (b) the provisions of the Schedules and Statements of Work expressed to survive and continue to have effect will do so (in accordance with their terms of otherwise indefinitely).
- 14.3 If the Agreement is terminated under Clause 13.1, or by the Customer under Clause 13.2 or 13.3 (but not in any other case) the Customer will be entitled to a refund of any Charges paid by the Customer to the Company in respect of any Services which were to be performed after the date of effective termination, and will be released from any obligation to pay such Charges to the Company (such amount to be calculated by the Company using any reasonable methodology).
- 14.4 Save as provided in Clause 14.3, the Customer will not be entitled to any refund of Charges on termination, and will not be released from any obligation to pay Charges to the Company.

15. Non-solicitation

The Customer will not, without the other party's prior written consent, during the Term or for a period of 6 months after the end of the Term, directly or indirectly, either for itself or for any other person, firm or company:

- (a) solicit the business of any person, firm, company or otherwise who is or was a client, customer, supplier, sub-contractor or agent of the Company; or
- (b) engage, employ or otherwise solicit for employment any employee or contractor of the Company involved in the performance of the Agreement.

16. Notices

- 16.1 Any notice given under the Agreement must be in writing (whether or not described as "written notice" in the Agreement) and must be delivered personally, sent by pre-paid first class post, or sent by fax or email, for the attention of the relevant person, and to the relevant address, fax number or email address given in the applicable Statement of Work (or as notified by one party to the other in accordance with this Clause).
- 16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
 - (b) where the notice is sent by first class post, 48 hours after posting; and
 - (c) where the notice is sent by fax or email, at the time of the transmission (providing the sending party retains written evidence of the transmission).

17. General

- 17.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
- 17.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 17.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 17.4 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 17.5 Either party may freely assign their rights and obligations under the Agreement without the other party's consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
- 17.6 The Company may subcontract any of its obligations under the Agreement to any third party.
- 17.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 17.8 The Agreement is made for the benefit of the parties, and is not intended to

benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.

17.9 Subject to Clause 9.1:

- (a) the Agreement will constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
- (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
- (c) neither party will have any liability other than pursuant to the express terms of the Agreement.

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

Schedule 1 Development Services

1. Definitions and interpretation

1.1 In this Schedule:

"Acceptance Criteria" has the meaning given to it in Paragraph 3.2;

"Acceptance Period" means the period specified as such in the Statement of Work;

"Customer Materials" means all works and materials provided by or on behalf of the Customer to the Company for incorporation into the Deliverables;

"Defect" means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of the Deliverables but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents or sub-contractors;
- (b) an incompatibility between the Deliverables and any other application, program or software (other than the Customer Materials and the Third Party Works);

"Design Elements" means the visual appearance of the Deliverables (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Deliverables) together with all mark-ups and style sheets comprised in or generated by the Deliverables, but excluding:

- (a) the Customer Materials; and
- (b) the Third Party Works;

"Development Charges" means the Charges specified as such in the Statement of Work;

"Development Services" means the Services to be provided under this Schedule, as detailed in Paragraph [2.1];

"Deliverables" means the website(s), web application(s), software and/or database(s) to be developed by the Developer for the Customer under this Schedule;

"Delivery Date" means the date specified as such in the Statement of Work;

"Software Elements" means the Deliverables excluding:

- (a) the Design Elements;
- (b) the Customer Materials; and
- (c) the Third Party Works; and

"Specification" means the specification for the Deliverables set out in the Statement of Work;

“Third Party Works” means the works and materials comprised in the Website, the Intellectual Property Rights in which are owned in whole or part by a third party and which are specified in the Specification (excluding the Customer Materials).

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Development Services

2.1 The Company will:

- (a) design, develop and deliver the Deliverables;
- (b) incorporate the Customer Materials and Third Party Works into the Deliverables;
- (c) keep the Customer informed of the progress of the development of the Deliverables; and
- (d) provide the Customer with reasonable access to the Deliverables during their development,

(the **“Development Services”**).

2.2 Subject to Paragraph 2.3, the Company will use reasonable endeavours to perform the Development Services in accordance with the timetable set forth in the Statement of Work.

2.3 Without prejudice to the provisions of Paragraph 2.2, the Company does not guarantee that that timetable referred to in Paragraph 2.2 will be met.

3. Delivery and acceptance

3.1 The Company will use reasonable endeavours to deliver the Deliverables to the Customer for acceptance testing on or before the Delivery Date.

3.2 During the Acceptance Period, the Customer will carry out acceptance tests to determine:

- (a) whether the Deliverables conform in all material respects with the Specification; and
- (b) whether the Deliverables have any Defects,

(the **“Acceptance Criteria”**).

3.3 If the Deliverables meet the Acceptance Criteria, the Customer will send to the Company a written notice during the Acceptance Period confirming acceptance of the Deliverables.

3.4 If the Deliverables do not meet the Acceptance Criteria:

- (a) the Customer will send to the Company a written notice during the Acceptance Period setting out in detail the respect(s) in which the Deliverables do not meet the Acceptance Criteria; and

- (b) the Company will have a further remedial period (of 30 Business Days) to modify the Deliverables so that they meet the Acceptance Criteria.

3.5 The Deliverables will be deemed to have been accepted by the Customer if:

- (a) the Customer does not give any notice to the Company under either Paragraph 3.3 or 3.4 during the Acceptance Period; or
- (b) the Customer publishes the Deliverables or uses the Deliverables for any purpose other than development and/or testing.

4. Intellectual Property Rights

4.1 From the date of acceptance of the Deliverables by the Customer, the Company hereby assigns to the Customer with full title guarantee all its Intellectual Property Rights in the Design Elements. These rights are assigned for the whole term of such rights together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.

4.2 All Intellectual Property Rights in the Software Elements will, as between the parties, be the property of the Company and, from the date of acceptance of the Deliverables by the Customer, the Company grants to the Customer a non-exclusive worldwide licence to use the Software Elements in connection with the Deliverables, subject always to the other terms of the Agreement, and providing the Customer must not:

- (a) sell, resell, rent, lease, supply, distribute or redistribute the Software Elements;
- (b) use the Software Elements in connection with any website, web application, script, computer program or software (other than the Deliverables); or
- (c) alter or adapt or edit the Software Elements,

and the Customer may only sub-license the rights licensed under this Clause for the limited purposes, and subject to the express restrictions, specified in this Paragraph.

4.3 The Third Party Works will be (at the option of the Company):

- (a) supplied in accordance with the relevant licensor's standard terms for online use;
- (b) supplied on licence terms notified by the Company to the Customer;
- (c) sub-licensed by the Company to the Customer on terms notified by the Company to the Customer; and/or
- (d) sub-licensed by the Company to the Customer on the basis of a non-exclusive, worldwide, royalty-free licence to use the Third Party Works in connection with the Deliverables.

4.4 Notwithstanding any other provision of the Agreement, the assignments and licences granted by the Company under this Schedule are subject to the payment

by the Customer of all amounts owing to the Company under this Schedule in full and on time. In the event that the Customer owes any amount to the Company under this Schedule and fails to pay that amount to the Company within 30 days of receiving a notice:

- (a) requiring it to do so; and
- (b) specifying that the assignments will revert and the licences will terminate if the amount remains unpaid,

then the Company may immediately revert the assignments and terminate the licences granted by the Company under this Schedule by giving written notice of reversion and termination to the Customer.

- 4.5 Subject to Paragraph 4.4, upon and following the termination of the Agreement, any licence granted by the Company to the Customer will continue notwithstanding termination, and this Paragraph 4 will continue to apply.
- 4.6 Without prejudice to Paragraph 4.7, the Company waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Deliverables arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.
- 4.7 The Company may include the statement "site built by Intelligent Penguin" together with a link to the Company's website on each page of any website comprised in the Deliverables in a position and in a form to be agreed by the parties. The Customer will retain any such credits and links in any adapted version of any website comprised in the Deliverables, and the Customer will (and will only) remove any such credits and links at the Company's request.

5. Additional Warranties

- 5.1 The Company warrants to the Customer:
 - (a) the Deliverables will meet the Specification as at the date of actual delivery to the Customer;
 - (b) that the use of the Deliverables (excluding the Customer Materials) by the Customer in accordance with the terms of the Agreement will not infringe the Intellectual Property Rights of any third party; and
 - (c) that the Deliverables will continue to operate without any Defects for a period of 6 months from the date of acceptance of the Deliverables (and if the Deliverables do not so operate, the Company will, for no additional charge, carry out any work necessary in order to ensure that the Deliverables operate without any Defects during this period).
- 5.2 The Customer acknowledges that the Company will design the Deliverables to work with the following web browser and web server technologies:

ASP.Net 4.0 C# and MS SQL 2010

and the Company does not warrant that the Deliverables will work with any other web browser or web server technologies.
- 5.3 The Customer further acknowledges that the Company does not purport to

provide any legal advice under the Agreement or in relation to the Deliverables and the Company does not warrant that the Deliverables will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.

6. Development Charges

The Development Charges, and dates upon or after which the Company may issue invoices for the Development Charges, are as set out in the Statement of Work.

7. Term of Schedule

7.1 This Schedule will come into force on the date of execution of the relevant Statement of Work, and will continue in force until cancelled in accordance with Paragraph 7.2.

7.2 This Schedule (and the provisions of any Statement of Work relating to this Schedule) will be automatically cancelled:

- (a) upon the later of:
 - (i) the acceptance of the Deliverables by the Customer in accordance with Paragraph 4; and
 - (ii) the payment of all Charges due to the Company under this Schedule by the Customer; or
- (b) on the date of effective termination of the Agreement under Clause 13.

Schedule 2 Hosting Services

1. Definitions and interpretation

1.1 In this Schedule:

"Hosted Materials" means all websites, web applications, software, information, data, databases and other works and materials stored, transmitted, published or processed using the Hosting Services;

"Hosting Charges" means the charges specified in the Statement of Work;

"Hosting Services" means the services provided or to be provided by the Company to the Customer under this Schedule, as detailed in Paragraphs 2 to 6; and

"Resource Limits" means the limits on the use of resources through the Hosting Services set out in the Statement of Work.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Transition

The Company will:

(a) where the Company holds any Customer website(s) on its development servers, transfer such website(s) from its development servers; or otherwise

(b) at the request of the Customer, use reasonable endeavours to assist with the transition of any Customer website(s) from any third party host.

3. Shared hosting

3.1 This Paragraph 3 will apply if and only if shared hosting is specified in a Statement of Work.

3.2 The Company will make available to the Customer hosting capacity on a shared server meeting the specification set out in the Statement of Work in all material respects.

3.3 The Company may make available to the Customer the ability to access, update or amend the Hosted Materials by FTP or similar means.

3.4 For the avoidance of doubt, the Customer will not have administration rights in relation to any shared server, and the Company may refuse any request to change the configuration of a shared server at its sole discretion.

4. Dedicated hosting

4.1 This Paragraph 4 will apply if and only if dedicated hosting is specified in a Statement of Work.

4.2 The Company will make available for the exclusive use of the Customer a dedicated server to the Customer meeting the specification set out in the

Statement of Work in all material respects, and will grant to the Customer administration rights with respect to that server.

- 4.3 The Customer acknowledges that the Company will not provide support in connection with the administration of any dedicated server, and the Customer warrants that it has all necessary expertise to configure, manage and keep the dedicated server secure at all times.
- 4.4 The Customer will not configure, or allow any other person to configure, a dedicated server in any way contrary to the guidelines on dedicated server configuration published on the Company website from time to time.
- 4.5 The Company may from time to time require that the Customer apply software and/or hardware upgrades to the dedicated server.
- 4.6 For the avoidance of doubt, dedicated servers made available under the Agreement will remain the property of the Company at all times.]

5. Co-located servers

- 5.1 This Paragraph 5 will apply if and only if co-location services are specified in a Statement of Work.
- 5.2 The Company will make available to the Customer space and connectivity meeting the specification set out in the Statement of Work at the data centre specified in the Statement of Work.
- 5.3 The Customer will be responsible for the activity and security of any co-located server and equipment, and for ensuring that the co-located servers and equipment function properly.
- 5.4 The Customer acknowledges that the Customer is responsible for ensuring that any co-located server and equipment does not suffer damage or data loss or corruption in the event of a power failure, power surge or similar electrical fault or phenomenon, and that the Company will not be liable in respect of losses arising out of such a fault or phenomenon.
- 5.5 The Customer may gain access to the co-located server and equipment by prior appointment only, must supply reasonably sufficient identification to gain access to the data centre housing the co-located server and equipment, and any such access may at the option of the Company be supervised by the Company or a representative of the Company.
- 5.6 The Customer acknowledges that access to a co-located server and equipment will be subject to any terms imposed by the relevant data centre from time to time.
- 5.7 For the avoidance of doubt, co-located servers and equipment will remain the property of the Customer at all times.

6. Email services

- 6.1 This Paragraph 5 will apply if and only if email services are specified in a Statement of Work.
- 6.2 The Company will upon request provide POP3/IMAP and webmail email services to the Customer, including email transmission, storage and/or management services

meeting the specification set out in the Statement of Work.

- 6.3 All mailboxes will be protected by anti-spam and anti-virus software.
- 6.4 If the Customer or a mailbox exceeds the relevant storage limit set out in the Schedule / notified by the Company to the Customer from time to time, the Company will delete stored emails to bring the Customer or mailbox within the storage limit.

7. Resource Limits

- 7.1 The Customer's utilisation of resources through the Hosting Services must not exceed the Resource Limits.
- 7.2 The Customer acknowledges that the Company may use technical measures to prevent the Customer exceeding the Resource Limits.
- 7.3 If the Customer's utilisation of Hosting Services exceeds or threatens to exceed]the Resource Limits, the parties will endeavour to agree a variation to the Agreement. If the parties cannot agree such a variation within a reasonable period (being not more than 30 days) following notice from the Company to the Customer requesting such variation, and Resource utilisation continues to exceed those limits, the Customer will be deemed to be in material breach of the Agreement.

8. Availability and scheduled maintenance

- 8.1 Subject to Paragraph 8.2, the Company will use reasonable endeavours to maintain the Hosting Services at the availability level specified in the Statement of Work.
- 8.2 The Company may suspend some or all of the Hosting Services in order to carry out scheduled maintenance or repairs. The Company will use reasonable endeavours to ensure that the Hosting Services are not suspended under this Paragraph during Business Hours.

9. Hosting Charges

The Company will issue invoices for the Hosting Charges to the Customer
monthly in advance during the Term

OR

from time to time in advance during the Term].

10. Hosting indemnity

The Customer hereby indemnifies and undertakes to keep indemnified the Company against all liabilities, losses, costs, expenses (including legal expenses and amounts paid upon advice in settlement of any legal action) arising out of or in connection with any activity upon, or any breach of security of, the Customer's dedicated or co-located server, and any malfunction of the Customer's co-located server]

11. Term of Schedule

- 11.1 This Schedule will come into force on the date of execution of the relevant Statement of Work, and will continue in force until cancelled in accordance with Paragraph 11.2 or 11.3.
- 11.2 This Schedule (and the provisions of any Statement of Work relating to this Schedule) will be automatically cancelled on the date of effective termination of the Agreement under Clause 13.
- 11.3 Either party may cancel this Schedule (and the provisions of any Statement of Work relating to this Schedule) by giving to the other party at least [30 days'] written notice of cancellation.
- 11.4 If this Schedule is cancelled under Paragraph 11.3, or terminated by the Customer under Clause 13.2 or 13.3 (but not in any other case):
 - (a) the Company will promptly provide to the Customer an electronic copy of the Hosted Materials; and
 - (b) the Company will provide such assistance as is reasonably requested by the Customer to transfer the hosting of the Hosted Materials to the Customer or another service provider, subject to payment of the Company's reasonable expenses.

Schedule 3 Support and Maintenance Services

1. Definitions and interpretation

1.1 In this Schedule:

"Support and Maintenance Charges" means the charges specified in respect of the Support and Maintenance Services in the Statement of Work, and any additional charges applied under Paragraph 6;

"Support and Maintenance Services" means the Services specified in Paragraphs 2 to 6;

"Supported System" means the system identified as such in the Statement of Work; and

"Upgrades" means new versions of, and updates to, the Supported System, whether for the purpose of fixing an error, bug or other issue in the Supported System or enhancing the functionality of the Supported System.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Helpdesk

2.1 The Company will make available, during Business Hours, a telephone and email helpdesk facility for the purpose of (inter alia) providing support to the Customer.

2.2 Subject to Paragraph 2.3, the Customer must make all requests for Support and Maintenance Services through the helpdesk, and all such requests must include at least the following information: Name, email, detail of support request.

2.3 The Company will use reasonable endeavours to ensure that a member of its support staff can be reached by mobile phone outside Business Hours in the case of an emergency.

3. Response and resolution times

3.1 The Company will:

(a) use reasonable endeavours to respond to requests for Support and Maintenance Services made through the helpdesk;

(b) use reasonable endeavours to resolve issues raised by the Customer

promptly / in accordance with the time matrix set out in the Statement of Work.

3.2 The Company will determine, acting reasonably, in to which severity category an issue raised through the Support and Maintenance Services falls.

4. Back-ups

4.1 Subject to Paragraph 4.2, the Company will:

(a) make back-ups of the data comprised in the Supported System on a daily basis, and will retain such back-ups for at least 10 days; and

- (b) at least once every 4 weeks, the Company will arrange for the storage of a current back-up of the data comprised in the Supported System at a remote data centre (which back-up will be over-written on the following off-site back-up date).

4.2 The Company will not make back-ups of email messages that have been downloaded by the Customer.

5. Upgrades

5.1 The Company will:

- (a) give to the Customer reasonable prior notification of the general release of an Upgrade to the customers of the Company;
- (b) provide copies of such Upgrades to the Customer promptly following the general release of the relevant Upgrade to the customers of the Company; and
- (c) apply such Upgrades to the Supported System promptly following the general release of the relevant Upgrade to the customers of the Company.

6. Limits on Support and Maintenance Services

Where the total person-hours spent by the Company performing the Support and Maintenance Services during any 1 month exceed 10 hours, then:

- (a) the Company will cease to have an obligation to provide Support and Maintenance Services to the Customer during that period; providing that
- (b) the Company may agree to provide additional Support and Maintenance Services to the Customer during that period, but the provision of such services will be subject to payment by the Customer of additional Support and Maintenance Charges at the Company's standard hourly rate[s] from time to time.

7. Support and Maintenance Charges

The Company will issue invoices for the Support and Maintenance Charges to the Customer

monthly in advance during the Term

OR

from time to time in advance during the Term.

8. Term of Schedule

8.1 This Schedule will come into force on the date of execution of the relevant Statement of Work, and will continue in force until cancelled in accordance with Paragraph 8.2 or 8.3.

8.2 This Schedule (and the provisions of any Statement of Work relating to this Schedule) will be automatically cancelled on the date of effective termination of the Agreement under Clause 13.

8.3 Either party may cancel this Schedule (and the provisions of any Statement of Work relating to this Schedule) by giving to the other party at least 30 days' written notice of cancellation.

Schedule 4

Domain Name Services

1. Definitions and interpretation

1.1 In this Schedule:

“**Domain Name Charges**” means the charges referred to in Paragraph 3.1; and

“**Domain Name Services**” means the Services detailed in Paragraph 2.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Domain Name Services

2.1 Subject to the payment of the applicable Domain Name Charges in advance, the Company will attempt to register domain names that the Customer orders using the interface on the the Company website, but does not warrant that it will be able to do so.

2.2 The Company may reject in its sole discretion any request to register a particular domain name.

2.3 The Customer warrants that the information submitted for the purposes of a domain name registration is current, accurate and complete, that it has the legal right to apply for and use the domain name, and that its use of the domain name will not infringe any person's Intellectual Property Rights or other legal rights.

2.4 The Customer undertakes to keep the information required for the purposes of a domain name registration up-to-date (which changes may be subject to additional Charges).

2.5 The Customer acknowledges that certain information submitted for the purposes of a domain name registration will be published on the internet via “WHOIS” services.

2.6 The Customer acknowledges that domain names will be subject to the rules and policies from time to time of the relevant registry or registration authority, and the Customer agrees to abide by all such rules and policies.

2.7 The Company will not offer any advice in relation to any actual or potential domain name dispute, and will have no liability in respect of the suspension or loss of a domain name by the Customer as a result of any domain name arbitration procedure or court proceedings.

2.8 The Company will have no responsibility for the Customer's use or retention of a domain name once registered, and it will be the Customer's responsibility to ensure that domain names are renewed and that applicable renewal charges are paid.

2.9 The Customer agrees to the terms of the applicable domain name registration agreement (as amended from time to time): <http://www.ukreg.com/companyinfo/termservice/>.

3. Domain Name Charges

- 3.1 The Domain Name Charges consist of the charges specified in the applicable Statement of Work.
- 3.2 Notwithstanding Clause 14.3, Domain Name Charges are non-refundable.
- 3.3 The Company will issue invoices for the Domain Name Charges to the Customer monthly in advance during the Term

OR

from time to time in advance during the Term].
- 3.4 The applicable Domain Name Charges must be paid before the Company will attempt to register a domain name.

4. Term of Schedule

- 4.1 This Schedule will come into force on the date of execution of the relevant Statement of Work, and will continue in force until cancelled in accordance with Paragraph 4.2 or 4.3.
- 4.2 This Schedule (and the provisions of any Statement of Work relating to this Schedule) will be automatically cancelled on the date of effective termination of the Agreement under Clause 13.
- 4.3 Either party may cancel this Schedule (and the provisions of any Statement of Work relating to this Schedule) by giving to the other party at least 30 days' written notice of cancellation.

Schedule 5 SSL Certificate Services

1. Definitions and interpretation

1.1 In this Schedule:

“**SSL Certificate Charges**” means the charges referred to in Paragraph 3.1; and

“**SSL Certificate Services**” means the Services detailed in Paragraph 2.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. SSL Certificate Services

2.1 Subject to the payment of the applicable Charges in advance, the Company will attempt to obtain SSL certificates that the Customer orders from the Company using the interface on the Company's website.

2.2 The Customer warrants that the information submitted to the Company for the purposes of an SSL certificate is current, accurate and complete.

2.3 The Customer undertakes to keep the information required for the purposes of an SSL certificate up-to-date.

3. SSL Certificate Charges

3.1 The SSL Certificate Charges consist of the charges specified in the applicable Statement of Work.

3.2 Notwithstanding Clause 14.3, SSL Certificate Charges are non-refundable.

3.3 The Company will issue invoices for the SSL Certificate Charges to the Customer monthly during the Term

OR

from time to time in advance during the Term].

3.4 The applicable SSL Certificate Charges must be paid before the Company will attempt to register a domain name.

4. Term of Schedule

4.1 This Schedule will come into force on the date of execution of the relevant Statement of Work, and will continue in force until cancelled in accordance with Paragraph 4.2 or 4.3.

4.2 This Schedule (and the provisions of any Statement of Work relating to this Schedule) will be automatically cancelled on the date of effective termination of the Agreement under Clause 13.

4.3 Either party may cancel this Schedule (and the provisions of any Statement of Work relating to this Schedule) by giving to the other party at least 30 days' written notice of cancellation.

Schedule 6 Web Marketing Services

1. Definitions and interpretation

1.1 In this Schedule:

“**Promoted Website**” means the website or websites specified in the Statement of Work;

“**Web Marketing Charges**” means the charges detailed in Paragraph 7.1; and

“**Web Marketing Services**” means the Services described in Paragraph 2.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Web Marketing Services

2.1 From the date of execution of the relevant Statement of Work, the Company will promote the Promoted Website; and promotion of the Promoted Website may include the provision of some or all of the following Web Marketing Services:

- (a) modification of the Promoted Website (including adding, deleting and/or altering text, images, pages, meta-tags, titles, mark-ups, style sheets, scripts, internal and external links and Promoted Website structure);
- (b) paid and unpaid submission of the Promoted Website to search engines and directories;
- (c) the creation and publication of material relating to the Promoted Website on other websites;
- (d) drafting and issuing electronic press releases;
- (e) link building;
- (f) the arrangement of internet advertising including pay-per-click advertising, pay-per-view advertising, banner advertising, and other forms of paid internet advertising;
- (g) the implementation and/or utilisation of affiliate marketing programmes;
- (h) the management and operation of an email marketing programme; and/or
- (i) other website promotion techniques whether known at the date of the Agreement or discovered or disseminated thereafter.

2.2 At regular intervals during the Term, the Company will provide the Customer with written reports about the Web Marketing Services provided in relation to the Website.

3. Customer responsibilities

3.1 The Customer will provide to the Company:

- (a) the ability to access and make changes to the Website;

- (b) assistance in determining appropriate keywords and keyword phrases which should be targeted using the Web Marketing Services;
 - (c) direct access to analytical data concerning the Promoted Website, such as data concerning referral sources, visitor activity, Promoted Website usage, conversion rates, and similar data.
- 3.2 The Customer will be responsible for procuring any third party co-operation reasonably required for the implementation and hosting of the Promoted Website and the provision of the other Web Marketing Services.
- 3.3 The Customer will be responsible for obtaining suitable licences of third party software (such as email client software) which are required for the full use of the Web Marketing Services.

4. Email marketing lists

Without prejudice to the generality of Clause [10], the Customer warrants that any marketing list (including any email marketing list) provided by the Customer, or on behalf of the Customer, to the Company will have been collected and collated in accordance with all applicable laws and regulations, and that the use of any such list by the Company for the purposes of the Web Marketing Services [in accordance with the instructions of the Customer] will not:

- (a) breach any applicable laws (including the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003);
- (b) infringe any third party's legal rights; or
- (c) give rise to any cause of action whether against the Company, the Customer, or any other person.

5. Intellectual Property Rights

- 5.1 The Customer grants the Company a non-exclusive licence to use the Promoted Website to the extent required for the Company to perform its obligations and exercise its rights under the Agreement.
- 5.2 All Intellectual Property Rights in any works arising in connection with the performance of the Web Marketing Services by the Company will be the property of the Company. Where the Company modifies the Promoted Website in the process of providing the Web Marketing Services, the Company hereby grants to the Customer a non-exclusive royalty-free licence to use such modifications in connection with the Website.

6. Customer acknowledgements

- 6.1 The Customer acknowledges that:
- (a) search engine algorithms will change from time-to-time, which may affect the Website's rankings in the search engine results pages, and the Company has no control over such changes;
 - (b) it can take many months for the Web Marketing Services to have any significant effects upon the ranking of a Promoted Website in the search engine results pages;

- (c) web site promotion is an ongoing task and, should the Customer terminate the Agreement and/or stop promoting the Website, that would be likely to have a negative impact upon the effects of the Web Marketing Services;
 - (d) the Company will not be responsible for any alterations to the Promoted Website made by the Customer or any third party that reverse or effect changes made to the Promoted Website by the Company as part of the Web Marketing Services;
 - (e) the promotion of the Promoted Website may lead to higher traffic levels and bandwidth requirements for the Website, and the Customer will be responsible for arranging and paying for such requirements; and
 - (f) notwithstanding the Web Marketing Services, the Website's search engine results page rankings and traffic levels may decrease as well as increase.
- 6.2 The Company does not warrant that any particular results will be achieved through the Web Marketing Services. Where the Company indicates specific targets that it will attempt to meet through the provision of the Web Marketing Services, such targets are not warranted and a failure to meet such targets will not be a breach of the Agreement.

7. Web Marketing Charges

- 7.1 The Web Marketing Charges are as specified in the Statement of Work.
- 7.2 The Company will issue invoices for the Web Marketing Charges to the Customer monthly in advance during the Term
- OR
- from time to time in advance during the Term].

8. Term of Schedule

- 8.1 This Schedule will come into force on the date of execution of the relevant Statement of Work, and will continue in force until cancelled in accordance with Paragraph 8.2 or 8.3.
- 8.2 This Schedule (and the provisions of any Statement of Work relating to this Schedule) will be automatically cancelled on the date of effective termination of the Agreement under Clause 13.
- 8.3 Either party may cancel this Schedule (and the provisions of any Statement of Work relating to this Schedule) by giving to the other party at least 30 days' written notice of cancellation.